IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Docket Nos. 18-2012, 18-2225, 18-2249, 18-2253, 18-2281,
18-2332, 18-2416, 18-2417, 18-2418, 18-2419, 18-2422,
18-2650, 18-2651, 18-2661, 18-2724, and 19-1385

In re National Football League Players' Concussion Injury Litigation

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JOINT APPENDIX
Volume I of XIII, Pages JA1-JA126

On appeal from Orders of the United States District Court for
the Eastern District of Pennsylvania (Hon. Anita B. Brody),
in No. 2:14-md-02323-AB and MDL No. 2323

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TABLE OF CONTENTS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	§	No. 2:12-md-02323-AB MDL No. 2323
Kevin Turner and Shawn Wooden, *on behalf of themselves and* others similarly situated, **Plaintiffs,** **v.** **National Football League and NFL Properties, LLC, successor-in-interest to NFL Properties, Inc.,** **Defendants.**	§	
THIS DOCUMENT RELATES TO: ALL ACTIONS	§	

NOTICE OF APPEAL

Notice is hereby given that Class Members Melvin Aldridge, Patrise Alexander, Charlie Anderson, Charles E. Arbuckle, Cassandra Bailey Individually and as the Representative of the Estate of Johnny Bailey, Rod Bernstine, Reatha Brown Individually and as the Representative of the Estate of Aaron Brown, Jr., Curtis Ceasar, Jr., Larry Centers, Trevor Cobb, Darrell Colbert, Elbert Crawford III, Christopher Crooms, Gary Cutsinger, Jerry W. Davis, Tim Denton, Leland C. Douglas, Jr., Michael Dumas, Corris Ervin, Robert Evans, Doak Field, James Francis, Baldwin Malcom Frank, Derrick Frazier, Murray Garrett, Clyde P. Glosson, Anthony Guillory, Roderick W. Harris, Wilmer K. Hicks, Jr., Patrick Jackson, Fulton Johnson, Richard Johnson, Gary Jones,

Eric Kelly, Patsy Lewis Individually and as the Representative of the Estate of Mark Lewis, Ryan McCoy, Emanuel McNeil, Gerald McNeil, Jerry James Moses, Jr., Anthony E. Newsom, Winslow Oliver, John Owens, Robert Pollard, Derrick Pope, Jimmy Robinson, Glenell Sanders, Thomas Sanders, Todd Scott, Nilo Silvan, Matthew Sinclair, Dwight A. Scales, Richard A. Siler, Frankie Smith, Eric J. Swann, Anthony Toney, Herbert E. Williams, James Williams, Jr., Butch Woolfolk, Keith Woodside, Milton Wynn, and James A. Young, Sr., and their counsel, Lubel Voyles LLP, Washington & Associates PLLC, and The Canady Law Firm, hereby appeal to the United States Court of Appeals for the Third Circuit from the Order and Memorandum entered April 5, 2018 at docket numbers 9860 and 9861, and the Order and Memorandum entered April 5, 2018 at docket numbers 9862 and 9863.

Date: May 3, 2018

Respectfully Submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	§	No. 2:12-md-02323-AB MDL No. 2323
Kevin Turner and Shawn Wooden, *on behalf of themselves and* others similarly situated, **Plaintiffs,** **v.** **National Football League and NFL Properties, LLC, successor-in-interest to NFL Properties, Inc.,** **Defendants.**	§	
THIS DOCUMENT RELATES TO: ALL ACTIONS	§	

NOTICE OF APPEAL

Notice is hereby given that Class Members Melvin Aldridge, Patrise Alexander, Charlie Anderson, Charles E. Arbuckle, Cassandra Bailey Individually and as the Representative of the Estate of Johnny Bailey, Rod Bernstine, Reatha Brown Individually and as the Representative of the Estate of Aaron Brown, Jr., Curtis Ceasar, Jr., Larry Centers, Trevor Cobb, Darrell Colbert, Elbert Crawford III, Christopher Crooms, Gary Cutsinger, Jerry W. Davis, Tim Denton, Leland C. Douglas, Jr., Michael Dumas, Corris Ervin, Robert Evans, Doak Field, James Francis, Baldwin Malcom Frank, Derrick Frazier, Murray Garrett, Clyde P. Glosson, Anthony Guillory, Roderick W. Harris, Wilmer K. Hicks, Jr., Patrick Jackson, Fulton Johnson, Richard Johnson, Gary Jones,

Eric Kelly, Patsy Lewis Individually and as the Representative of the Estate of Mark Lewis, Ryan McCoy, Emanuel McNeil, Gerald McNeil, Jerry James Moses, Jr., Anthony E. Newsom, Winslow Oliver, John Owens, Robert Pollard, Derrick Pope, Jimmy Robinson, Glenell Sanders, Thomas Sanders, Todd Scott, Nilo Silvan, Matthew Sinclair, Dwight A. Scales, Richard A. Siler, Frankie Smith, Eric J. Swann, Anthony Toney, Herbert E. Williams, James Williams, Jr., Butch Woolfolk, Keith Woodside, Milton Wynn, and James A. Young, Sr., and their counsel, Lubel Voyles LLP, Washington & Associates PLLC, and The Canady Law Firm, hereby appeal to the United States Court of Appeals for the Third Circuit from the Explanation and Order entered May 24, 2018 at docket number 10019.

Date: June 1, 2018

Respectfully Submitted,

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIG.,	))))	**2:12-md-02323-AB**

Objector Cleo Miller hereby appeals to the United States Court of Appeals for the Third Circuit from this Court's Memorandum (Document 9860), Order granting attorney's fees (Document 9861), and Explanation and Order (Document 10019) that were entered in this case.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed via the ECF filing system on June 5, 2018, and that as a result electronic notice of the filing was served upon all attorneys of record.

/s/ John J. Pentz
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIG.,	))))	**2:12-md-02323-AB**

Objector Curtis Anderson hereby appeals to the United States Court of Appeals for the Third Circuit from this Court's Memorandum (Document 9860), Order granting attorney's fees (Document 9861), and Explanation and Order (Document 10019) that were entered in this case.

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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE	No. 2:12-md-02323-AB MDL No. 2323
PLAYERS' CONCUSSION INJURY LITIGATION	Hon. Anita Brody
Kevin Turner and Shawn Wooden, on behalf of themselves and others similarly situated, Plaintiffs, v. National Football League and NFL Properties, LLC, successor-in-interest to NFL Properties, Inc., Defendants.	Civ. Action No. 14-00029-AB

Mitnick Law Office hereby appeals to the US District Court of Appeals for the Third Circuit from the Court's Memorandum filed under Document No. 9860; Order granting attorney's fees filed under Document No. 9861; and the Court's explanation and Order filed under Document No. 10019, all of which were entered in this case.

Respectfully submitted,

/s/ Craig R. Mitnick

Craig R. Mitnick, Esquire

DATED: JUNE 8, 2018

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed via the ECF filing system on June 8, 2018, and that as a result electronic notice of the filing was served upon all attorneys of record.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	No. 2:18-md-02323-AB MDL No. 2323
Kevin Turner and Shawn Wooden, on behalf of themselves and others similarly situated, Plaintiffs, v. National Football League and NFL Properties LLC, successor-in-interest to NFL Properties, Inc., Defendants.	No. 2:12-md-02323-AB MDL No. 2323 Hon. Anita B. Brody
THIS DOCUMENT RELATES TO: ALL ACTIONS	Civ. Action No. 14-00029-AB

CO-LEAD CLASS COUNSEL ANAPOL WEISS'S NOTICE OF APPEAL

Co-Lead Class Counsel Anapol Weiss, P.C. hereby appeals, to the United States Court of Appeals for the Third Circuit, this Court's decision of May 24, 2018 (Explanation and Order, Dkt. 10019) addressing the allocation of the common benefit attorneys' fees award.

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Dated: June 15, 2018

CERTIFICATE OF SERVICE

I hereby certify that a copy of Co-Lead Class Counsel Anapol Weiss's Notice of Appeal was filed electronically with the Clerk of Court using the CM/ECF System on June 15, 2018. The CM/ECF System will serve all counsel of record.

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Attorney for Anapol Weiss

Dated: June 15, 2018

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	No. 2:18-md-02323-AB MDL No. 2323
Kevin Turner and Shawn Wooden, *on behalf of themselves and others similarly situated,* Plaintiffs, v. National Football League and NFL Properties LLC, Successor-in-interest to NFL Properties, Inc., Defendants.	No. 2:12-md-02323-AB MDL No. 2323 **Hon. Anita B. Brody**
THIS DOCUMENT RELATES TO: ALL ACTIONS	Civ. Action No. 14 – 00029 – AB

KREINDLER & KREINDLER LLP'S NOTICE OF APPEAL

Kreindler & Kreindler LLP hereby appeals, to the United States Court of Appeals for the Third Circuit, this Court's decision of May 24, 2018 (Explanation and Order, Dkt. 10019) addressing the allocation of the common benefit attorneys' fees award.

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/s/ Anthony Tarricone

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	No. 2:12-md-02323-AB MDL No. 2323
Kevin Turner and Shawn Wooden, *on behalf of themselves and others similarly situated*, Plaintiffs, v. National Football League and NFL Properties, LLC, successor-in-interest to NFL Properties, Inc., Defendants.	Civil Action No. 2:14-cv-00029-AB
THIS DOCUMENT RELATES TO: ALL ACTIONS	

NOTICE OF APPEAL

NOTICE is hereby given that Objectors Alan Faneca, Roderick "Rock" Cartwright, Jeff Rohrer, and Sean Considine hereby appeal to the United States Court of Appeals for the Third Circuit from the April 5, 2018 Memorandum (Dkt. No. 9860) and Order (Dkt. No. 9861); the April 12, 2018 Order (Dkt. No. 9876); the May 24, 2018 Explanation and Order (Dkt. No. 10019); and the June 5, 2018 Order (Dkt. No. 10042) in 2:14-cv-00029-AB, 2:12-md-02323, and 2:18-md-2323, and from all rulings and orders merged therein, and all other underlying or related orders, rulings, and findings. This appeal is made pursuant to 28 U.S.C. § 1291.

Dated: June 22, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2018, I caused the foregoing Notice of Appeal to be filed with the United States District Court for the Eastern District of Pennsylvania via the Court's CM/ECF system, which will provide electronic notice to all counsel and parties.

/s/ Steven F. Molo

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	MDL No. 2323 Case No. 18-md-2323-AB
Kevin Turner and Shawn Wooden, *on behalf of themselves and others similarly situated,* Plaintiffs, v. National Football League and NFL Properties LLC, successor-in-interest to NFL Properties, Inc. Defendants.	Civil Action No. 14-cv-00029-AB
THIS DOCUMENT RELATES TO: ALL ACTIONS	

ZIMMERMAN REED LLP'S NOTICE OF APPEAL

Zimmerman Reed LLP hereby appeals to the United States Court of Appeals for the Third Circuit, the Court's May 24, 2018 Explanation and Order (Dkt. 10019) allocating the common benefit attorneys' fee award.

/ / / / /

/ / / / /

/ / / / /

Dated: June 22, 2018

Respectfully submitted,

ZIMMERMAN REED LLP

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I hereby certify that a copy of Zimmerman Reed LLP's Notice of Appeal was filed electronically with the Clerk of Court using the CM/ECF System on June 22, 2018. The CM/ECF System will serve all counsel of record.

Dated: June 22, 2018

ZIMMERMAN REED LLP

s/ Charles S. Zimmerman

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ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION LITIGATION	§	
	§	**No. 12-md-2323 (AB)**
KEVIN TURNER & SHAWN WOODEN on behalf of themselves and others similarly situated	§	**MDL No. 2323**
	§	**Hon. Anita B. Brody**
v.	§	
	§	**Civ. Action No. 14-00029-AB**
National Football League and NFL Properties LLC, successor-in-interest to NFL Properties, Inc.	§	
THIS DOCUMENT RELATES TO: ALL ACTIONS	§	

NOTICE OF APPEAL

The Coffman Law Firm, Weller, Green, Toups & Terrell, LLP, The Webster Law Firm, and The Warner Law Firm, all of which were counsel for the Armstrong Objectors, hereby appeal to the United States Court of Appeals for the Third Circuit from the district court's Memorandum (Doc. No. 9860), district court's Order awarding attorneys' fees (Doc. No. 9861), and district court's Explanation and Order (Doc. No. 10019) entered in this case.

Date: June 22, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true copy of the above Notice of Appeal was served on all counsel of record, via the Court's ECF system, on June 22, 2018.

<u>/s/ *Richard L. Coffman*</u>
Richard L. Coffman

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	MDL No. 2323 No. 12-md-2323 (AB)
Kevin Turner and Shawn Wooden, on behalf of themselves and others similarly situated, Plaintiffs, v. National Football League and NFL Properties LLC, successor-in-interest to NFL Properties, Inc., Defendants. –	Civil Action No. 14-cv-00029-AB
THIS DOCUMENT RELATES TO: ALL ACTIONS	

POPE MCGLAMRY, P.C.'S NOTICE OF APPEAL

NOTICE is hereby given that Pope McGlamry appeals to the United States Court of Appeals for the Third Circuit, from the Court's May 24, 2018 Explanation and Order (Dkt. 10019) in MDL-2323 allocating the common-benefit attorneys' fee award.

Dated: June 25, 2018.

Respectfully submitted,

POPE McGLAMRY, P.C.

/s/ *Michael L. McGlamry*
Michael L. McGlamry

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Pope McGlamry P.C.'s Notice of Appeal was filed electronically with the Clerk of Court using the CM/ECF System on June 25, 2018. The CM/ECF System will serve all counsel of record.

Dated: June 25, 2018

POPE, McGLAMRY, KILPATRICK,
MORRISON & NORWOOD, P.C.

/s/*Michael L. McGlamry*
Michael L. McGlamry
Georgia Bar No. 492515

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	No. 2:12-md-02323-AB MDL No. 2323
Kevin Turner and Shawn Wooden, *on behalf of themselves and others similarly situated*, Plaintiffs, v. National Football League and NFL Properties, LLC, successor-in-interest to NFL Properties, Inc., Defendants.	Civil Action No. 2:14-cv-00029-AB
THIS DOCUMENT RELATES TO: ALL ACTIONS	

AMENDED NOTICE OF APPEAL

NOTICE is hereby given that Objectors Alan Faneca, Roderick "Rock" Cartwright, Jeff Rohrer, and Sean Considine hereby appeal to the United States Court of Appeals for the Third Circuit from the April 5, 2018 Memorandum (Dkt. No. 9860) and Order (Dkt. No. 9861); the April 12, 2018 Order (Dkt. No. 9876); the May 24, 2018 Explanation and Order (Dkt. No. 10019); the June 5, 2018 Order (Dkt. No. 10042); and the July 9, 2018 Order (Dkt. No. 10127) in 2:14-cv-00029-AB, 2:12-md-02323, and 2:18-md-2323, and from all rulings and orders merged therein, and all other underlying or related orders, rulings, and findings. This appeal is made pursuant to 28 U.S.C. § 1291.

Dated: July 13, 2018

Respectfully submitted,

/s/ Steven F. Molo

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Attorneys for Alan Faneca, Roderick Cartwright, Jeff Rohrer, and Sean Considine

CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2018, I caused the foregoing Amended Notice of Appeal to be filed with the United States District Court for the Eastern District of Pennsylvania via the Court's CM/ECF system, which will provide electronic notice to all counsel and parties.

/s/ Steven F. Molo

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	No. 2:18-md-02323-AB MDL No. 2323
Kevin Turner and Shawn Wooden, on behalf of themselves and others similarly situated, Plaintiffs, v. National Football League and NFL Properties LLC, successor-in-interest to NFL Properties, Inc., Defendants.	No. 2:12-md-02323-AB MDL No. 2323 Hon. Anita B. Brody
THIS DOCUMENT RELATES TO: ALL ACTIONS	Civ. Action No. 14-00029-AB

CO-LEAD CLASS COUNSEL ANAPOL WEISS'S NOTICE OF APPEAL

Co-Lead Class Counsel Anapol Weiss, P.C. hereby appeals, to the United States Court of Appeals for the Third Circuit, this Court's Orders of June 27, 2018 (Doc. Nos. 10103 & 10104) addressing the individually retained plaintiffs' attorneys' fees and the common benefit attorneys' fees holdback.

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP

By: */s/Gaetan J. Alfano*
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Attorneys for Anapol Weiss

Dated: July 17, 2018

CERTIFICATE OF SERVICE

I hereby certify that a copy of Co-Lead Class Counsel Anapol Weiss's Notice of Appeal was filed electronically with the Clerk of Court using the CM/ECF System on July 16, 2018. The CM/ECF System will serve all counsel of record.

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP

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Dated: July 17, 2018

Attorneys for Anapol Weiss

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	§	No. 2:12-md-02323-AB MDL No. 2323
Kevin Turner and Shawn Wooden, *on behalf of themselves and* others similarly situated, **Plaintiffs,** **v.** **National Football League and NFL Properties, LLC, successor-in-interest to NFL Properties, Inc.,** **Defendants.**	§	
THIS DOCUMENT RELATES TO: ALL ACTIONS	§	

NOTICE OF APPEAL

Notice is hereby given that Class Members Melvin Aldridge, Patrise Alexander, Charlie Anderson, Charles E. Arbuckle, Cassandra Bailey Individually and as the Representative of the Estate of Johnny Bailey, Rod Bernstine, Reatha Brown Individually and as the Representative of the Estate of Aaron Brown, Jr., Curtis Ceasar, Jr., Larry Centers, Trevor Cobb, Darrell Colbert, Elbert Crawford III, Christopher Crooms, Gary Cutsinger, Jerry W. Davis, Tim Denton, Leland C. Douglas, Jr., Michael Dumas, Corris Ervin, Robert Evans, Doak Field, James Francis, Baldwin Malcom Frank, Derrick Frazier, Murray Garrett, Clyde P. Glosson, Anthony Guillory, Roderick W. Harris, Wilmer K. Hicks, Jr., Patrick Jackson, Fulton Johnson, Richard Johnson, Gary Jones,

Eric Kelly, Patsy Lewis Individually and as the Representative of the Estate of Mark Lewis, Ryan McCoy, Emanuel McNeil, Gerald McNeil, Jerry James Moses, Jr., Anthony E. Newsom, Winslow Oliver, John Owens, Robert Pollard, Derrick Pope, Jimmy Robinson, Glenell Sanders, Thomas Sanders, Todd Scott, Nilo Silvan, Matthew Sinclair, Dwight A. Scales, Richard A. Siler, Frankie Smith, Eric J. Swann, Anthony Toney, Herbert E. Williams, James Williams, Jr., Butch Woolfolk, Keith Woodside, Milton Wynn, and James A. Young, Sr., and their counsel, Lubel Voyles LLP, Washington & Associates PLLC, and The Canady Law Firm, hereby appeal to the United States Court of Appeals for the Third Circuit from the Explanation and Order entered June 27, 2018 at docket number 10104.

Date: July 24, 2018

Respectfully Submitted,

/s/ Lance H. Lubel

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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2018, I filed the foregoing through the Court's CM/ECF system, which will provide electronic notice to all counsel of record and constitutes service on all counsel of record.

/s/ Lance H. Lubel
Lance H. Lubel

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	No. 2:18-md-02323-AB MDL No. 2323
Kevin Turner and Shawn Wooden, *on behalf of themselves and others similarly situated*, Plaintiffs, v. National Football League and NFL Properties LLC, Successor-in-interest to NFL Properties, Inc., Defendants.	No. 2:12-md-02323-AB MDL No. 2323 **Hon. Anita B. Brody**
THIS DOCUMENT RELATES TO: ALL ACTIONS	Civ. Action No. 14 – 00029 – AB

KREINDLER & KREINDLER LLP'S NOTICE OF APPEAL

Kreindler & Kreindler LLP hereby appeals, to the United States Court of Appeals to the Third Circuit, this Court's Orders of June 27, 2018 (Doc. Nos. 10103 & 10104) addressing the individually retained plaintiffs' attorneys' fees and the common benefit attorneys' fees holdback

KREINDLER & KREINDLER, LLP

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Kreindler & Kreindler LLP's Notice of Appeal was filed electronically with the Clerk of Court using the CM/ECF System on July 25, 2018. The CM/ECF System will serve all counsel of record.

/s/ Anthony Tarricone

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	No.:2:12-md-02323-AB MDL No. 2323 Civ. Action No. 14-00029-AB
Kevin Turner and Shawn Wooden, on behalf of themselves and others similarly situated, Plaintiffs, v. National Football League and NFL Properties LLC, successor-in-interest to NFL Properties, Inc., Defendants.	
THIS DOCUMENT RELATES TO: ALL ACTIONS	

NOTICE OF APPEAL

NOTICE is hereby given that Class Counsel, the Locks Law Firm (LLF) hereby appeals to the United States Court of Appeals for the Third Circuit from the May 24, 2018 Explanation and Order (ECF No. 10019).

Respectfully submitted,

LOCKS LAW FIRM

Dated: August 2, 2018

By: /s/ Gene Locks

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing Notice of Appeal was filed via the Electronic Case Filing System in the United States District Court for the Eastern District of Pennsylvania, on all parties registered for CM/ECF in the litigation.

Respectfully Submitted,

LOCKS LAW FIRM

Dated: August 2, 2018

By: /s/ Gene Locks

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	§	No. 2:12-md-02323-AB MDL No. 2323
Kevin Turner and Shawn Wooden, *on behalf of themselves and* others similarly situated, **Plaintiffs,** **v.** **National Football League and NFL Properties, LLC, successor-in-interest to NFL Properties, Inc.,** **Defendants.**	§	
THIS DOCUMENT RELATES TO: ALL ACTIONS	§	

NOTICE OF APPEAL

Notice is hereby given that Class Members Melvin Aldridge, Patrise Alexander, Charlie Anderson, Charles E. Arbuckle, Cassandra Bailey Individually and as the Representative of the Estate of Johnny Bailey, Rod Bernstine, Reatha Brown Individually and as the Representative of the Estate of Aaron Brown, Jr., Curtis Ceasar, Jr., Larry Centers, Trevor Cobb, Darrell Colbert, Elbert Crawford III, Christopher Crooms, Gary Cutsinger, Jerry W. Davis, Tim Denton, Leland C. Douglas, Jr., Michael Dumas, Corris Ervin, Robert Evans, Doak Field, James Francis, Baldwin Malcom Frank, Derrick Frazier, Murray Garrett, Clyde P. Glosson, Anthony Guillory, Roderick W. Harris, Wilmer K. Hicks, Jr., Patrick Jackson, Fulton Johnson, Richard Johnson, Gary Jones,

Eric Kelly, Patsy Lewis Individually and as the Representative of the Estate of Mark Lewis, Ryan McCoy, Emanuel McNeil, Gerald McNeil, Jerry James Moses, Jr., Anthony E. Newsom, Winslow Oliver, John Owens, Robert Pollard, Derrick Pope, Jimmy Robinson, Thomas Sanders, Todd Scott, Nilo Silvan, Matthew Sinclair, Dwight A. Scales, Richard A. Siler, Frankie Smith, Eric J. Swann, Anthony Toney, Herbert E. Williams, James Williams, Jr., Butch Woolfolk, Keith Woodside, Milton Wynn, and James A. Young, Sr., and their counsel, Lubel Voyles LLP, Washington & Associates PLLC, and The Canady Law Firm, hereby appeal to the United States Court of Appeals for the Third Circuit from the Explanation and Order entered January 16, 2019 at docket number 10378.

Date: February 15, 2019

Respectfully Submitted,

/s/ Lance H. Lubel

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CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2019, I filed the foregoing through the Court's CM/ECF system, which will provide electronic notice to all counsel of record and constitutes service on all counsel of record.

/s/ Lance H. Lubel
Lance H. Lubel

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	No. 2:12-md-02323-AB MDL No. 2323
Kevin Turner and Shawn Wooden, on behalf of themselves and others similarly situated, Plaintiffs, v. National Football League and NFL Properties, LLC, successor-in-interest to NFL Properties, Inc., Defendants.	**Hon. Anita B. Brody**
THIS DOCUMENT RELATES TO: ALL ACTIONS	

April 5, 2018 **Anita B. Brody, J.**

MEMORANDUM

Over the past year, the Court has focused on the implementation of the Settlement Agreement. Now that implementation is in progress, it is time to focus on attorneys' fees. There are four key issues for the Court to decide:

(1) the total amount for the common benefit fund;

(2) the allocation of the common benefit fund among Class Counsel;

(3) the amount, if any, to be set aside for attorneys' fees incurred in the implementation of this complex Settlement Agreement and the possible need for future attorneys' fees throughout the 65-year term of the Agreement; and

(4) the reasonableness of the amount of fees to be paid by individual Class Members from their Monetary Awards to individually retained plaintiffs' attorneys ("IRPAs").

In this opinion, I will address the first issue, the total amount for the common benefit fund. The fourth issue, relating to IRPA contingent fee agreements will be addressed in another

opinion also filed today. The second and third issues relating to allocation and funding for future implementation will be determined at a later date.

Class Counsel has petitioned the Court for $112.5 million in reasonable costs and attorneys' fees. I will award to Class Counsel the requested amount comprised of $106,817,220.62 in attorneys' fees and $5,682,779.38 in costs. The attorneys' fee portion of the award amounts to approximately 11% of the total value of the Settlement.

Class Counsel also has petitioned the Court to holdback 5% of all Monetary Awards to pay for past and future work implementing the Settlement. I currently do not have enough information to predict the amount of compensation Class Counsel will need for implementation. Therefore, as a precaution, I reserve judgment on the holdback request, and the Claims Administrator will continue to holdback 5% of each Award.[1]

I. BACKGROUND

This case began as an aggregation of lawsuits brought by former Players against the NFL Parties for head injuries sustained while playing NFL football. On January 31, 2012, the MDL was formed and proceedings were centralized in this Court. The parties spent almost two years briefing complex motions to dismiss and engaging in intense negotiations before a preliminary class action settlement was submitted for approval. On January 14, 2014, the Court denied preliminary approval over concerns as to the adequacy of the proposed $675 million settlement fund in light of uncertainty regarding the magnitude of damages.

On April 22, 2015, after crucial revisions were made to the Settlement, the Court granted final approval under Federal Rule of Civil Procedure 23(b)(3). The revised Settlement Agreement established an *unlimited* fund to compensate retired NFL Players, valued then at

[1] The Court hopes to address this issue once more data regarding the scope of implementation work is available—ideally in one year.

close to $1 billion. The Agreement also included other benefits to Class Members such as an uncapped Baseline Assessment Program, valued at $75 million, a $10 million Education Fund, and funding for a Claims Administrator to process Monetary Awards.

The Settlement Agreement also provided for the NFL Parties to pay "Class Counsel's attorneys' fees and reasonable costs," without objection, up $112.5 million. Settlement Agreement § 21.1, ECF No. 6481-1 at 77-78. This same provision of the Settlement Agreement allowed Class Counsel to petition the Court for a holdback "up to five percent (5%) of each Monetary Award and Derivative Claimant Award to facilitate the Settlement program and related efforts of Class Counsel." *Id.* at 78.

On April 18, 2016, the Third Circuit approved the Settlement Agreement. Petitions for review by the United States Supreme Court were sought by objectors and denied. On January 6, 2017, the Agreement became final upon the expiration of the time to file a Supreme Court rehearing petition.

On February 13, 2017, Co-Lead Class Counsel filed a fee petition, on behalf of the entire Class Counsel, seeking the full $112.5 million provided for by the Settlement Agreement for reasonable expenses and attorneys' fees. Fee Petition Mem. 3, ECF No. 7151-1. The petition filed by Co-Lead Class Counsel also seeks the 5% holdback of each Monetary Award to pay for costs and fees associated with implementing the Settlement.[2] In response to Co-Lead Class Counsel's petition, more than 20 objections were filed, with most of the concerns relating to the 5% holdback request. On April 10, 2017, Co-Lead Class Counsel filed an Omnibus Reply to all objections. Omnibus Reply, ECF No. 7464. A request for discovery related to the fee petition was also filed by an objector, and Co-Lead Class Counsel responded.

[2] Because of this pending request, the Claims Administrator has been withholding 5% of all Monetary Awards while awaiting the Court's decision on this issue.

The Court appointed Professor William B. Rubenstein of Harvard Law School as an expert witness on attorneys' fees, covering the issues of (1) fees to be paid to individually retained plaintiffs' attorneys ("IRPAs") and (2) Class Counsel's 5% holdback request. Professor Rubenstein then issued an Expert Report covering those topics. *See* Expert Report, ECF No. 9526. Interested parties were given the opportunity to respond to the Expert Report. Professor Rubenstein then filed a reply to the interested parties' responses to the Expert Report. Expert Reply, ECF No. 9571. Lastly, several interested parties filed sur-replies to Professor Rubenstein's reply.

The implementation process has been ongoing for over a year. The Monetary Awards claims process began accepting claims on March 23, 2017, and, as of this date, the Claims Administrator has issued notices of payable Monetary Awards in 369 claims for a total value of over $400 million. *See* NFL Concussion Settlement Website, https://www.nflconcussionsettlement.com (last visited April 4, 2018). With money now flowing to Class Members, it is appropriate for the Court to compensate Class Counsel.

II. DISCUSSION

Federal Rule of Civil Procedure 23(h) states that a "court may award reasonable attorney's fees . . . that are authorized by law or by the parties' agreement." Thus, "a thorough judicial review of fee applications is required in all class action settlements." *In re General Motors Corp. Pick–Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 819 (3d Cir. 1995). The duty to review fee applications "exists independently of any objection." *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 730 (3d Cir. 2001) (quoting *Zucker v. Occidental Petroleum Corp.*, 192 F.3d 1323, 1328–29 (9th Cir.1999)).

This Court is obligated to protect the interests of the Class, "acting as a fiduciary for the class." *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 307-08 (3d. Cir. 2005) (citing *Cendant*, 264

F.3d at 231); *Report of the Third Circuit Task Force, Court Awarded Attorney's Fees*, 108 F.R.D. 237, 251 (1985). The Settlement Agreement is in accord, stating that disbursement of attorneys' expenses and fees is "subject to the approval of the Court." Settlement Agreement § 21.1, ECF No. 6481-1, at 78. Here, the Parties agreed that the NFL would pay up to $112.5 million in expenses and fees without objection, and Class Counsel has requested that exact amount.

A. Expenses

Class Counsel has requested the payment of $5,682,779.38 in expenses. Consistent with my fiduciary obligation to review all of Class Counsel's fee requests, I have reviewed the expenses submitted and concluded that they are reasonable. There have been no objections to the expenses requested by Class Counsel. Hence, I will award Class Counsel reimbursement for the expenses submitted.

B. Attorneys' Fees

Class Counsel has requested $106,817,220.62 in attorneys' fees, which represents approximately 11% of the value of the Settlement Agreement. I will award Class Counsel the requested amount.

There are two methods for determining the reasonableness of attorneys' fees in class actions cases: (1) percentage-of-recovery and (2) lodestar. The use of each varies based on the type of litigation. "Common fund cases . . . are generally evaluated using a 'percentage-of-recovery' approach, followed by a lodestar cross-check." *Halley v. Honeywell Int'l, Inc.*, 861 F.3d 481, 496 (3d Cir. 2017) (citation omitted).

Where, as here, a defendant has voluntarily undertaken the establishment of a separate fund to pay class counsel's costs and fees, the case is most appropriately reviewed as a common fund case. *See, e.g., In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d

283, 333-34 (3d Cir. 1998); *GM Trucks*, 55 F.3d at 822. Therefore, I will evaluate the request in this case as a common fund by using the percentage-of-recovery approach with a lodestar cross-check.

1. Percentage-of-Recovery

The award in this case produces a reasonable percentage-of-recovery of 11%. The percentage-of-recovery approach "compares the amount of attorneys' fees sought to the total size of the fund." *Halley*, 861 F.3d at 496. To determine if the percentage chosen is reasonable, a court must apply the factors found in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000) and *Prudential*, 148 F.3d at 338–40, which are:

> (i) the size of the fund created and the number of persons benefitted;
>
> (ii) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel;
>
> (iii) the skill and efficiency of the attorneys involved;
>
> (iv) the complexity and duration of the litigation;
>
> (v) the risk of nonpayment;
>
> (vi) the amount of time devoted to the case by plaintiffs' counsel;
>
> (vii) the awards in similar cases;
>
> (viii) the value of benefits attributable to the efforts of Class Counsel relative to the efforts of other groups, such as government agencies conducting investigations;
>
> (ix) the percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement at the time counsel was retained; and
>
> (x) any innovative terms of settlement.

Halley, 861 F.3d at 496 (summarizing the *Gunter*/*Prudential* factors).

After a review of all ten factors, I conclude that the balance weighs in favor of awarding $106,817,220.62 million to Class Counsel in attorneys' fees. The performance of Class Counsel

regarding this complex Settlement Agreement has been extraordinary. The fees requested here are well-earned.

i. Size of the fund created and the number of persons benefitted

Evaluation of this first factor begins with an assessment of the overall value of the Settlement and the number of individuals that benefitted from the class action. There are more than 20,000 Class Members registered to participate in this Settlement.[3] To date, more than 369 claims have been approved worth over $400 million.

The Monetary Award Fund in the Settlement Agreement is uncapped, requiring its value to be estimated using actuarial projections. The actuarial materials for both Class Counsel and the NFL were shared during negotiations and were made publically available. *See In re Nat'l Football League Players' Concussion Injury Litig.*, 307 F.R.D. 351, 364 (E.D. Pa. 2015), *amended sub nom. In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-MD-02323-AB, 2015 WL 12827803 (E.D. Pa. May 8, 2015). An updated analysis was provided in April 2017, which accounted for additional data on registration rates. Initially, the Monetary Award Fund was valued at $950 million. The revised estimate places the value at over $1.2 billion[4] due to higher than expected registration. Importantly, any risk that the Fund is undervalued by the actuarial estimates is borne by the NFL. Therefore, if the level of injury or participation rate is higher than predicted, the value to Class Members will increase accordingly.[5]

[3] The deadline to register in the Settlement has passed. The Settlement does allow for late registration upon a showing of good cause.

[4] The net present value of the estimated Monetary Award Fund is $785 million. Co-Lead Class Counsel Response to Expert Report 4, ECF No. 9552-1.

[5] Additionally, the uncapped Monetary Award Fund will also be used to pay costs to compensate the Special Masters, the Appeals Advisory Panel, and the Lien Resolution Administrator. The fees for these services were not calculated as a part of the value of the

To fully value the entire Settlement, however, the value of the Monetary Award Fund needs to be combined with the value created by five other provisions: the Baseline Assessment Program, the Education Fund, Notice Costs, Claims Administration, and the Attorneys' Fees Provision. The updated actuarial analysis including these values shows that the total estimated value of the Settlement is approximately $1.5 billion. Co-Lead Class Counsel Response to Expert Report 4, ECF No. 9552-1. To properly value the 65-year Settlement for our purposes though, this Court must use the net present value of the Settlement, which is $982.2 million. *Id*.

ii. Presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel

In evaluating the second factor, I must consider the presence or absence of substantial objections to the Settlement terms and Class Counsel's fee request. As this Court and the Third Circuit have already indicated, the Class reacted favorably to the terms of the Settlement Agreement. Only approximately 1% of Class Members filed objections and only 1% opted out. *In re Nat'l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 438 (3d Cir. 2016), *as amended* (May 2, 2016). As noted above, more than 20,000 Class Members have registered, exceeding the initial actuarial estimates. The positive response is all the more significant because the details of the terms of this Settlement Agreement were widely known and information was made broadly available, thereby allowing well-informed registration decisions.

There are approximately twenty objections to Class Counsel's fee petition. The vast majority of these objections relate to Class Counsel's request for a 5% holdback of Monetary Awards to pay for implementation work. Those objections have been considered, and the Court

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Monetary Award Fund in the actuarial estimates. These services provide even more value for the Class that is not accounted for in the $1.2 billion estimate.

is reserving decision on Class Counsel's request for a 5% holdback. Thus, many of the concerns raised by the objectors will be addressed at a later date.

Overall, the response to both the Settlement Agreement and to Class Counsel's fee petition has been largely positive. This factor weighs in favor of granting the requested fee award.

iii. Skill and efficiency of the attorneys involved

In approving the Settlement Agreement, I noted that "[n]o Objector challenges the expertise of Class Counsel. Co–Lead Class Counsel Christopher Seeger has spent decades litigating mass torts, class actions, and multidistrict litigations. . . . Co–Lead Class Counsel Sol Weiss, Subclass Counsel Arnold Levin and Dianne Nast, and Class Counsel Gene Locks and Steven Marks possess similar credentials." *In re Nat'l Football League Players' Concussion Injury Litig.*, 307 F.R.D. at 373. Class Counsel's performance was praised by retired United States District Court Judge Layn R. Phillips, who mediated the negotiations of this Settlement. Mot. Prelim. Approval, Ex. D, ECF No. 6073-4. Plaintiffs' appellate counsel, Professor Samuel Issacharoff possesses similarly impressive credentials and showed great skill in shepherding the settlement through the Third Circuit appeal and petitions for certiorari in the United States Supreme Court.

No one has taken issue with the skill or efficiency of Class Counsel in securing this Settlement Agreement, nor could they. This factor weighs heavily in Class Counsel's favor.

iv. Complexity and duration of the litigation

For the fourth factor, I must consider the complex nature of this litigation and the duration of these proceedings. This Settlement was secured without formal discovery, with

limited litigation of motions, and with no bellwether trials. But, that does not mean the proceedings were simple.

This "case implicate[d] complex scientific and medical issues not yet comprehensively studied." *In re Nat'l Football League Players' Concussion Injury Litig.*, 307 F.R.D. at 388. Mediator Judge Phillips, reported on the complexity of the multi-tracked mediation effort that was undertaken to obtain this Settlement. Mot. Prelim. Approval, Ex. D at 3. Class Counsel retained medical experts to advise "the parties on the multiplicity of medical definition issues and other medical aspects of the settlement." *Id.* at 4. Economists and actuaries were also retained to assist "in modeling the likely disease incidence and adequacy of the funding provisions and benefit levels contained in the proposed settlement." *Id*. Though motions practice was limited, Class Counsel was well-informed of the legal hurdles that would be faced if settlement was not reached, including preemption defenses, issues in proving causation, and statute of limitations defenses, to name only a few. *Id.* at 5-7. Class Counsel's deep knowledge of the strengths and weaknesses of the case allowed for intense and very productive negotiations.

Class Counsel mastered the intricacies of this case, creating matrices that maximized Class Member similarities and minimized differences. This allowed for the formation of the Class despite player differences, and it allowed for the relatively quick resolution of this complicated case so that impaired Class Members could receive compensation and access to treatment as quickly as possible. I agree with Class Counsel that this was a "high-risk, long-odds litigation." Fee Petition Mem. 1.

The duration of this case, from filing to the effective date, was about five years. During that time Class Counsel billed more than 50,000 hours. Additionally, Class Counsel will continue

to bill hours as the Settlement is implemented over the next 65 years. This factor weighs in Class Counsel's favor.

v. Risk of nonpayment

The fifth factor is an assessment of the financial health of the defendant and the likelihood that it will be able to satisfy a successful judgment against it. *Rite Aid*, 396 F.3d at 304. The financial solvency of the NFL was not an obstacle in this litigation.

vi. Amount of time devoted to the case by plaintiffs' counsel

In evaluating the sixth factor, I consider the time that Class Counsel has devoted to the case. A review of summaries submitted by the attorneys is sufficient for purposes of this factor. *Accord Rite Aid*, 396 F.3d at 307-08 (endorsing summaries of hours worked for lodestar calculation). Class Counsel has submitted summaries detailing the litigation that required more than 50,000 hours of work.

The litigation in this case would not have reached a settlement within such a short period of time if it were not for the intensive preparation by Class Counsel prior to and during negotiations. As Class Counsel explained, "[t]hose efforts included researching Plaintiffs' claims, developing information about the Class, contesting the NFL Parties' threshold preemption motions, consulting with numerous experts (including medical, economic, and actuarial), exchanging reams of information with the NFL Parties, extensive and spirited mediation, and defending the Settlement at three judicial levels . . . ." Fee Petition Mem. 43 (footnote omitted). Lastly, to reiterate, Class Counsel will remain involved in this case for the entire 65-year term of the Agreement. The time spent in this matter has been extensive and will continue. This factor favors approval of the fee application.

vii. Awards in similar cases

Next, I will compare the award requested in this case with awards in similar actions. *Rite Aid*, 386 F.3d at 303-04. An award of $106,817,220.62 for securing the Settlement Agreement constitutes approximately 11% of the estimated present value of the overall fund ($982.2 million). *See* Expert Reply 2-3. Class Counsel has provided extensive citation to cases both in and outside this district that present similar percentage rates for comparison. *See* Fee Petition Mem. 44-45. Additionally, Class Counsel has provided a study by Professor Brian T. Fitzpatrick, which notes that the average fee award for class settlements is 13.7% nationwide with a median of 9.5%. *Id*. at 47.[6] The 11% award here compares favorably to similar cases, thus this factor favors approval.[7]

viii. Value of benefits attributable to the efforts of Class Counsel relative to the efforts of other groups, such as government agencies conducting investigations

This was not a case "where government prosecutions [laid] the groundwork for private litigation." *In re Diet Drugs*, 582 F.3d 524, 544 (3d Cir. 2009) (citation omitted). This case required a pioneering effort by Class Counsel.

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[6] One objector urges a narrower review of the cases, suggesting that I compare the fees in this case specifically with the fees in the *Avandia* and *Diet Drugs* cases. Cobb Obj. Mem. 4-6, ECF No. 7401 (citing *In re Avandia Marketing, Sales Practices & Prods. Liab. Litig.*, No. 07-MD-01871 2012, WL 6923367 (E.D. Pa. Oct. 19, 2012); *In re Diet Drugs Prods. Liab. Litig.*, 553 F. Supp. 2d 442 (E.D. Pa. 2008)). I have considered each of those cases and conclude that the fee request here compares favorably. I also believe that a broader view of the cases is a better measure of the fee award than simply comparing the percentage-of-recovery.

[7] Some objectors suggest this is a "mega-fund" case, requiring generally lower fee percentages than present here. Class Counsel argues that this case should not be classified as a "mega-fund." Ultimately, I do not believe that the classification has any significant impact on the evaluation here. Whether this is a "mega-fund" or not, I am obligated to simply apply the "fact-intensive *Prudential/Gunter* analysis." *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 331 n.4 (3d Cir. 2011) (quoting *Rite Aid*, 396 F.3d at 303). I have done so.

In fact, Class Counsel was actually fighting *against* prior cases in which the NFL Parties had successfully utilized defenses to obtain pretrial dismissals. *See In re Nat'l Football League Players' Concussion Injury Litig.*, 307 F.R.D. at 391-92. This litigation required Class Counsel to reinvent the Plaintiff's position by conducting new research, developing experts, and briefing issues without the benefit of previous successful lawsuits.

Some objectors note that certain congressional hearings aided Class Counsel. While those proceedings undoubtedly provided some of the foundation for this litigation, the impact was limited. Overall, this factor strongly supports granting the requested fee.

ix. Percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement at the time counsel was retained

Assessment of fees for Class Counsel and individually retained plaintiffs' attorneys ("IRPAs") in an MDL/class action is a complicated matter. I have taken great care to compartmentalize the fees sought by Class Counsel for the work done to advance the interests of the Class and the work done by IRPAs to advance the interests of their individual clients. As is discussed in the IRPA fee cap opinion also issued today, the market rates for counsel are important for purposes of that analysis. As is also discussed in that opinion, I have considered the overall fees that are properly paid to *all* attorneys involved in this litigation. I have determined that a 33% overall contingent fee rate for both Class Counsel and IRPAs combined is reasonable. To achieve the 33% overall rate, I presumptively capped IRPA fees at 22%. In light of that determination, Class Counsel's 11% award is reasonable under this factor.

x. Any innovative terms of settlement

Perhaps the strongest factor weighing in favor of the acceptance of Class Counsel's fee request is the final factor that takes into account the innovative terms of this Settlement Agreement. These terms have been noted throughout this analysis, but they bear repeating.

The 65-year Settlement Agreement in this case is uncapped, ensuring that funding will always be available for Class Members to receive Monetary Awards. It provides a complex matrix for determining Monetary Award amounts. Through this design, the Settlement Agreement ensures that Class Members' common exposure to the risks of concussive hits predominates, while simultaneously addressing any specific differences in impairments. The Agreement also accounts for the NFL Parties' causation concerns by reducing Awards based on a player's age at the time of diagnosis and the number of years played in the NFL.

Recognizing that CTE is an impairment that could not be diagnosed in a living player, the Settlement creatively implements a system to compensate cognitive symptoms associated with CTE instead. CTE "inflicts symptoms compensated by Levels 1.5 and 2 Neurocognitive Impairment and is strongly associated with the other Qualifying Diagnoses in the Settlement." *In re Nat'l Football League Players' Concussion Injury Litig.*, 307 F.R.D. at 400.

Without these innovative terms, a settlement might not have been possible under current Supreme Court precedent. This factor weighs heavily in Class Counsel's favor.

xi. Conclusion

After looking at all of the *Prudential/Gunter* factors, it is clear that under a percentage-of-recovery analysis the 11% award of $106,817,220.62 million is reasonable.

2. Lodestar Crosscheck

Once the percentage-of-recovery factors are considered, a lodestar cross-check is used to check the valuation. "The lodestar award is calculated by multiplying the number of hours reasonably worked on a client's case by a reasonable hourly billing rate . . . ." *Rite Aid*, 396 F.3d at 305. "The lodestar crosscheck 'is performed by dividing the proposed fee award by the lodestar calculation, resulting in a lodestar multiplier.'" *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 330 n.61 (3d Cir. 2011) (quoting *In re AT & T Corp.*, 455 F.3d 160, 164 (3d Cir.

2006)). "The multiplier endeavors 'to account for the contingent nature or risk involved in a particular case,' and may be adjusted 'to account for particular circumstances, such as the quality of representation, the benefit obtained for the class, [and] the complexity and novelty of the issues presented.'" *Id.* (quoting *AT & T Corp*, 455 F.3d at 164 n.4). Since the lodestar cross-check is "not a full-blown lodestar inquiry," the evaluation can be based on summaries and less precise formulations. *Rite Aid*, 396 F.3d at 307 n.16 (quoting *Report of Third Circuit Task Force, Selection of Class Counsel*, 208 F.R.D. 340, 423 (2002)).

In the fee petition, Class Counsel has requested payment for 51,068 hours. Class Counsel's submission provided documentation for more than twenty firms that worked on this case. Upon my request, Class Counsel has submitted copies of time records from these firms for *in camera* review. Additionally, Class Counsel has submitted 6,830 hours for implementation through September 2017. Thus, the combined hours are 57,898. I determine that the hours submitted by Class Counsel are a fair and reasonable representation of the work performed.

Though the hours submitted are reasonable, the billing rates are not. Early in the litigation, Class Counsel reported that "[p]laintiffs have also reached consensus to establish reasonable uniform hourly rates for all partners, associates and paralegals conducting work that benefits all plaintiffs for purposes of reimbursement for fees from the Common Benefit Fund and for lodestar check against a fee and expense request from any class settlement." Joint Application 8, ECF No. 54. Despite this, the billing rates submitted by these law firms varied greatly. For example, billing rates submitted for partners ranged from $500 per hour to $1,350 per hour.

It is not reasonable that the partner rates submitted by some firms are more than twice the rates submitted by other firms.[8] To avoid this problem with the submitted rates, I will use a blended billing rate, which is endorsed by the Third Circuit. *See Rite Aid*, 396 F.3d at 306. To "blend" rates, a court can simply average the rates of all partners, associates, and paralegals. *See In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2017 WL 3175924, at *4 (N.D. Cal. July 21, 2017). Here, blending the rates of all partners, associates, and paralegals produces an average rate of $623.05 per hour. Using this blended average, I have calculated that Class Counsel's combined lodestar is $36,073,348.90.

To calculate the multiplier, I must divide the fee award, $106,817,220.62, by the lodestar amount $36,073,348.90. This results in a lodestar multiplier of 2.96, well within the norm for this Circuit, which has noted that multipliers ranging from one to four are frequently awarded. *Prudential*, 148 F.3d at 341 (quoting 3 Herbert Newberg & Alba Conte, Newberg on Class Actions § 14.03 at 14-15 (3d ed. 1992)); *cf. Cendant*, 243 F.3d at 742 (observing a range of reasonable multipliers from 1.35 to 2.99). Considering the risk undertaken by Class Counsel and their extraordinary work in this litigation, I conclude that a multiplier of 2.96 provides strong additional support for approving the requested fee award.[9]

[8] Class Counsel provided extensive citation to other cases where billable rates were deemed "reasonable" by a court. In those examples, courts were presented with partner billing rates that varied by approximately $300, as opposed to the $850 divergence here.

[9] Significantly, even though this multiplier is reasonable, it is artificially high. The actual lodestar in this case will continue to increase as Class Counsel bills more hours for settlement implementation. It is likely that a portion of Class Counsel's fee request will be allocated to pay for this future work. Therefore, because the lodestar and lodestar multiplier have an inverse relationship, the multiplier will continue to *decrease* as Class Counsel continues to increase the lodestar by billing hours for implementation.

C. 5% Holdback Request

Class Counsel has requested that all future implementation work be paid through a holdback of 5% of all Monetary Awards. Based on the projected value of the Monetary Award Fund, this would provide an estimated $40 million to pay for additional costs and fees.[10] I appointed Professor William B. Rubenstein of Harvard Law School to advise the Court regarding Class Counsel's holdback request. Professor Rubenstein concluded that this Court should set aside $22.5 million from $112.5 million request to pay for Class Counsel's work to implement the Settlement Agreement and the remaining $90 million should be used to pay Class Counsel for their work in securing the Settlement Agreement. Expert Report 1, ECF No. 9526. Professor Rubenstein suggested that setting aside $22.5 million into an interest bearing account would enable Class Counsel to receive $1 million per year for implementation during the 65-year term of the Settlement. *Id.*[11]

The Court is troubled that the $1 million per year suggested by Professor Rubenstein may be insufficient to pay the costs and fees associated with future implementation of the Settlement. The past year of implementation alone has required Class Counsel to bill well over $5 million in costs and fees. *See* Decl. Chris Seeger 19, ECF No. 8447 (summarizing implementation costs and fees through September 2017). While the Court assumes that Class Counsel's implementation work will decrease as the Settlement progresses, no party or expert has provided the Court with an adequate estimate for the amount of work that will be required in the future.

[10] Class Counsel provided an updated analysis of the Settlement, which estimates the value of the Monetary Award Fund to be $1,297,0000,000, with a net present value of $785,000,000. Co-Lead Class Counsel Response to Expert Report 4. Five percent is, therefore, $39,250,000.

[11] As a last resort, Professor Rubenstein stated that the Court could consider a 2% holdback of Monetary Awards to help pay for implementation. Expert Reply 7-8.

Because of this current ambiguity and in an abundance of caution, the Court reserves decision on the 5% holdback request. The Court plans to adopt Professor Rubenstein's recommendation to set aside some portion of the $112.5 million for future implementation work, but the Court simply needs more time to evaluate the situation before making a final determination regarding the amount of a set aside from the $112.5 award and the amount, if any, of a percentage holdback of Monetary Awards. Reserving decision will allow for the accumulation of more data that can be used to more accurately assess future costs and fees. The issue will be revisited at a future point once a clearer picture has emerged. In the meantime, the Claims Administrator will continue to holdback 5% of each Monetary Award as a precautionary measure. The holdback comes directly from the Award if a Class Member is unrepresented by counsel, however, if the Class Member is represented by an IRPA, then the holdback comes from the IRPA's contingent fee.[12]

The Court recognizes the hardship that holding back funds may place on unrepresented Class Members and IRPAs, but the hardship is necessary to ensure the integrity and longevity of the Settlement. The Court hopes and anticipates that the combination of a set aside and a precautionary 5% holdback will provide more than enough money for implementation. If the 5% holdback is more than necessary, then any remaining portion of that amount will be returned to Class Members and IRPAs.

[12] In the opinion also released today regarding the IRPA fee cap, I set a presumptive cap of 22%. Therefore, with the 5% holdback, the cap is effectively 17% until this issue is resolved. As noted in that opinion, a 17% cap is still reasonable while keeping the presumptive overall contingent fee payment at 33%—the 5% holdback plus IRPAs' 17% contingent fee and Class Counsel's 11% award. For Class Members without IRPAs, their overall contingent fee payment at this point will be 16%—the 5% holdback plus Class Counsel's 11% award.

D. Incentive Awards for Class Representatives

As a final matter, Class Counsel seeks incentive awards of $100,000 for each of the Class Representatives in this case: Corey Swinson, Shawn Wooden, and Kevin Turner. There has not been any objection submitted regarding this request. Upon review, I approve the awards. *Accord Brady v. Air Line Pilots Ass'n*, 627 F. App'x 142, 146 (3d Cir. 2015) (approving a $640,000 incentive award as part of a $15.9 million attorneys' fee award).

As was explained by Class Counsel, the work performed by the Class Representatives in this litigation was important. Mr. Swinson was the original representative for Subclass 1, and Mr. Wooden took over that role after Mr. Swinson's passing. Class Counsel reports that both worked closely with Subclass 1 counsel, Arnold Levin, as the terms of the Settlement Agreement were negotiated. After final approval, Mr. Wooden remained actively involved, helping to provide information to other players and their families about the Settlement Agreement. Class Counsel reports that Mr. Turner provided similar support for Subclass 2 counsel, Dianne Nast. Mr. Turner passed away shortly before the Third Circuit affirmed the Settlement Agreement.

I believe that this work provided a great value to the Class. The contributions should be recognized through a payment to Mr. Wooden and payments to the estates of Mr. Turner and Mr. Swinson. Because there have been no objections raised to these disbursements and the Class Representatives' roles will not change going forward, I conclude that these amounts will be paid immediately and prior to allocation of the common benefit fund to Class Counsel.

III. Conclusion

For these reasons, I conclude that Co-lead Counsel's petition for award of attorneys' fees and reimbursement of expenses for Class Counsel will be granted.[13] The request for a 5%

[13] I have not addressed the allocation of this common benefit fund in this opinion. The allocation will be addressed in a separate opinion. At that time, I will review the proposed fee allocation

holdback of Monetary Awards remains pending.

s/Anita B. Brody

ANITA B. BRODY, J.

submitted by Co-Lead Class Counsel, the objections, and Co-Lead Class Counsel's reply. I will also review the fee petitions submitted (ECF Nos. 7070, 7116, 7230, and 8725) and the related responses.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	No. 2:12-md-02323-AB MDL No. 2323
Kevin Turner and Shawn Wooden, on behalf of themselves and others similarly situated, Plaintiffs, v. National Football League and NFL Properties, LLC, successor-in-interest to NFL Properties, Inc., Defendants.	**Hon. Anita B. Brody**
THIS DOCUMENT RELATES TO: ALL ACTIONS	

ORDER

AND NOW, this 5th day of April, 2018, in accordance with the common benefit fund Memorandum issued on April 5, 2018, it is **ORDERED** that Class Counsel is awarded $106,817,220.62 in attorneys' fees and $5,682,779.38 in costs ($112.5 million total).

It is further **ORDERED** that Shawn Wooden, the estate of Corey Swinson, and the estate of Kevin Turner are each to be paid $100,000 from the common benefit fund as an incentive award for being Class Representatives.

s/Anita B. Brody

ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to:

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	No. 2:12-md-02323-AB MDL No. 2323
Kevin Turner and Shawn Wooden, on behalf of themselves and others similarly situated, Plaintiffs, v. National Football League and NFL Properties, LLC, successor-in-interest to NFL Properties, Inc., Defendants.	**Hon. Anita B. Brody**
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April 5, 2018 **Anita B. Brody, J.**

MEMORANDUM

Over the past year, the Court has focused on the implementation of the Settlement Agreement. Now that implementation is in progress, it is time to focus on attorneys' fees. There are four key issues for the Court to decide:

(1) the total amount for the common benefit fund;

(2) the allocation of the common benefit fund among Class Counsel;

(3) the amount, if any, to be set aside for attorneys' fees incurred in the implementation of this complex Settlement Agreement and the possible need for future attorneys' fees throughout the 65-year term of the Agreement; and

(4) the reasonableness of the amount of fees to be paid by individual Class Members from their Monetary Awards to individually retained plaintiffs' attorneys ("IRPAs").

This last issue impacts on the Monetary Awards to be distributed to individual Class Members and will be addressed below.[1]

On September 14, 2017, I appointed Professor William B. Rubenstein of Harvard Law School as an expert witness on attorneys' fees, covering the issues of (1) fees to be paid to individually retained plaintiffs' attorneys ("IRPAs") and (2) Class Counsel's 5% holdback request. Professor Rubenstein then issued an Expert Report covering those topics. Interested parties were given the opportunity to respond to the Expert Report. Professor Rubenstein then filed a reply to the interested parties' responses to the Expert Report. Lastly, several interested parties filed sur-replies to Professor Rubenstein's reply.

For the reasons set forth below, after considering the recommendations of Professor Rubenstein and the viewpoints of interested parties, I adopt the conclusions of Professor Rubenstein and order that IRPAs' fees be capped at 22% plus reasonable costs. I further adopt Professor Rubenstein's suggestion that IRPAs and Class Members be allowed to file petitions seeking upward or downward deviations from this fee cap. Such deviations, however, will only be granted in exceptional or unique circumstances.

I. BACKGROUND

In his Expert Report, Professor Rubenstein provided extensive background on IRPAs' involvement in this litigation. Expert Report 2-12, ECF No. 9526. Most importantly, Professor Rubenstein explained the special circumstances related to IRPAs in this case:

> While Class Counsel represent the interests of all class members in the aggregate, many individual class members also have their own lawyers. This MDL encompassed thousands of individual lawsuits filed by hundreds of players who were represented individually (or in groups) by their own lawyers. Moreover, other players (or their families) retained individual counsel to represent them in

[1] Because the amount of fees to be paid to Class Counsel impacts the calculation of the fee cap addressed in this opinion, the common benefit fund opinion has also been filed today.

> the course of the class action proceedings. The class action settlement foreclosed all individual cases, except for those pursued by players who opted out of the settlement, and the class action notice advised players that, "You do not have to hire your own attorney." Nonetheless, about half (47% or 9,477 out of 20,376) of the parties that have registered for payment through the class action settlement are represented by their own attorneys.

Id. at 7-8 (footnotes omitted).

II. DISCUSSION

A. The Authority to Impose a Fee Cap

I adopt Professor Rubenstein's conclusion that a court has the authority to impose a fee cap derived from both the power of a court presiding over an MDL or class action and the ability of a court to review individual fee awards. *Id.* at 12-19.

In MDLs and class actions, "district courts have routinely capped attorneys' fees *sua sponte*." *In re World Trade Center Disaster Site Litig.*, 754 F.3d 114, 126 (2d Cir. 2014); *see also In re: Oil Spill by Oil Rig "Deepwater Horizon" in Gulf of Mexico, on Apr. 20, 2010*, No. 10-md-2179 (E.D. La. June 15, 2012) (order setting caps on individual attorneys' fees), ECF No. 6684 at 2; *In re Vioxx Prod. Liab. Litig.*, 650 F. Supp. 2d 549, 553-54, 558-59 (E.D. La. 2009). In complex mass litigation, "excessive fees can create a sense of overcompensation and reflect poorly on the court and its bar," negatively impacting "[p]ublic understanding of the fairness of the judicial process." *In re Zyprexa Prod. Liab. Litig.*, 424 F. Supp. 2d 488, 493-94 (E.D.N.Y. 2006). Consequently, courts must curb such excessive or unreasonable fees to safeguard the public's perception of the courts and the legitimacy of the legal system's handling of massive MDLs and class actions. The way to curb such fees is with a cap.

District courts also derive authority to cap fees from their power to review an individual attorney's fee agreement. "Third Circuit law unequivocally supports the proposition that this Court possesses the inherent authority to regulate the contingent fees of lawyers appearing before

it and any lawyer representing a class member in this Settlement is clearly subject to this authority." Expert Report 19; *see also McKenzie Constr., Inc. v. Maynard*, 758 F.2d 97, 100 (3d Cir. 1985) [*McKenzie I*] ("[I]n a civil action, a fee may be found to be 'unreasonable' and therefore subject to appropriate reduction by a court . . . ."); *Dunn v. H. K. Porter Co.*, 602 F.2d 1105, 1110 (3d Cir. 1979) ("[W]here there is a fee contract, courts have the general power to override it, and set the amount of the fee." (internal quotation marks omitted)).

B. The Need for a Fee Cap

I agree with Professor Rubenstein that the circumstances of this litigation require the implementation of a cap. I adopt Professor Rubenstein's conclusion that a fee cap is necessary in this case, because:

> (1) *players with IRPAs are paying two [sets of] lawyers' fees* (2) in a case settled on an aggregate basis (3) following relatively little litigation (4) requiring IRPAs to undertake a modest amount of work . . . for [5] vulnerable clients [6] who may be subject to contingent fees contracts that were either problematic at formation or are no longer reasonable.

Expert Report 26 (emphasis added). The reality is that two sets of attorneys—IRPAs and Class Counsel—have worked to achieve results for individual Class Members. Although some of the work of IRPAs may be considered separate and distinct from the work of Class Counsel, it is undeniable that all IRPAs have benefitted from Class Counsel's work. An assessment of the reasonableness of IRPAs' fees requires a deduction for Class Counsel's work, which reduced the amount of work required of IRPAs. *See Walitalo v. Iacocca*, 968 F.2d 741, 749 (8th Cir. 1992) (acknowledging that class counsel reduced the amount of work required of individual counsel and directing "the district court to review the plaintiffs' fee arrangements with their individual counsel for reasonableness in light of their decreased responsibilities and the fee award to [class] counsel"). This reduction is necessary to prevent a "free-rider problem"—enabling IRPAs to

financially benefit from the work of Class Counsel even though they did not bear the costs. *In re Nineteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.*, 982 F.2d 603, 606 (1st Cir. 1992); *cf. In re Vioxx*, 760 F. Supp. 2d at 653 ("[A]s between a common benefit attorney who expended considerable time, resources, and took significant economic risks to produce the fee, and the primary attorney who did not, it is appropriate and equitable that the former receive some economic recognition from the [latter]."). Additionally, it is necessary to reduce IRPAs' contingent fees to avoid the problem of Class Members paying twice for the same work—once to Class Counsel and then again to IRPAs.[2]

[2] Many of the interested parties contend that Class Counsel's fee has no bearing on Class Members' recoveries because the Settlement is uncapped. Thus, they argue that Class Counsel's fee should not be calculated in the total amount of attorneys' fees attributable to each Class Member. I join Professor Rubenstein in rejecting this argument:

> A simple analogy helps demonstrate why I continue to believe that Class Counsel's contingent fees must be counted as part of the class's recovery regardless of how the settlement is structured. Assume a client hired a lawyer to pursue a tort claim on a one-third contingent fee basis. After some litigation, the lawyer calls the client and says, "Good news, the defendant has agreed to settle the case and you will be getting $1.1 million. Better yet," she continues, "After we settled your case, we negotiated my fee and the defendant separately agreed to pay me $700,000 directly, with not a penny of that coming out of your $1.1 million." At that point, the client might think, "Wait a minute. It appears we are getting $1.8 million in total and my 2/3 share should be $1.2 million and your 1/3 share $600,000, per our retainer agreement." And of course the client would be right. The point of the analogy is not to suggest malfeasance by Class Counsel in this case; the analogy simply drives home the point that, in assessing the reasonableness of the fees being paid by individual class members, Class Counsel's fees must be considered a component of the class's relief. The facts that the parties have set class members' individual recovery levels net of those fees, that the fees were (partially) negotiated separately from the class's recovery, and/or that the NFL has agreed to pay all claims made in the settlement, in no way alter the point, nor are the parties' efforts to distinguish the key Third Circuit precedents convincing.

Expert Reply 3 n.8, ECF No. 9571. Moreover, although the Settlement Agreement is uncapped, the amount of each individual Class Member's Monetary Award is limited by

I further adopt Professor Rubenstein's conclusion that "a one-third contingent fee best approximate[s] the risk and work that the two sets of attorneys (Class Counsel and IRPAs) undertook in this case."[3] Expert Reply 3, ECF No. 9571. Because I conclude that an overall contingent fee of 33% is appropriate, and I have concluded in a separate opinion issued today that the fee to be paid to Class Counsel will constitute approximately 11% of the Class's recovery,[4] the fees to be paid to IRPAs will be presumptively capped at 22%. To ensure that a 22% cap is fair to all parties involved, I must now crosscheck that number with an assessment of the relevant Third Circuit factors, data on contingent fee levels in this case, and data from other cases.

In assessing the reasonableness of contingent fees, the Third Circuit directs courts to consider the "circumstances existing at the time the arrangement is entered into, . . . the quality of the work performed, the results obtained, and whether the attorney's efforts substantially contributed to the result." *McKenzie Constr., Inc. v. Maynard*, 823 F.2d 43, 45 (3d Cir. 1987)

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the terms of the Settlement Agreement. Thus, Class Counsel's fee may have impacted the formula for each individual Monetary Award and must be considered a component of Class Members' relief.

[3] Some interested parties contend that the fee cap selected is arbitrary. I adopt Professor Rubenstein's recommendation that an overall fee of 33% is appropriate given the nature of the litigation in this case. This case settled early in the litigation. As Professor Rubenstein noted:

> Class Counsel settled the entire case after briefing one dispositive motion, without undertaking any formal discovery, without significant motion practice, without summary judgment briefings, and without preparing for, much less engaging in, a class (or even one bellwether) trial; no IRPA will need to undertake these tasks either. One of the firms designated as Class Counsel itself states that "[t]his is the only mega fund case in which there was no paper discovery, no depositions, no motion practice, no litigation, no trials, no trial activity."

Expert Report 22 (footnote omitted) (internal quotation marks omitted). Given that, on average, other similar cases capped overall fees at 32.25%, the decision to use 33% is well-founded. *See, e.g., In re Vioxx*, 650 F. Supp. 2d 549 (implementing a cap of 32% on overall fees in a case settled following six bellwether trials).

[4] The 11% figure is derived from the overall attorneys' fee award ($106,817,220.62) divided by the overall estimated present value of the Settlement ($982,200,000).

[*McKenzie II*]. Importantly, a court must consider whether subsequent events have rendered an agreement—that may have been fair at the time of contracting—unfair at the time of enforcement. *Id.*

I adopt Professor Rubenstein's conclusion that "application of the Third Circuit's reasonableness factors argues in favor of a substantially reduced contingent fee" for IRPAs. Expert Report 28. The risks of this litigation changed dramatically throughout the various phases of litigation that were noted by Professor Rubenstein. I adopt the conclusion that "contingent fee contracts for large percentages entered into earlier in this case's history are no longer reasonable under the case's present circumstances." *Id.* at 27.

I must also consider "the quality of the work performed, the results obtained, and whether the attorney's efforts substantially contributed to the result." *McKenzie II*, 823 F.2d at 45. The work of Class Counsel substantially contributed to the aggregate resolution of this case. The IRPAs' work here involves the shepherding of their clients through the claims process of the Settlement Agreement. "An IRPA should be able to serve her client to this level without need of 30-40% of that award." Expert Report 28. Therefore, the presumptive cap of 22% is reasonable, and any exceptional or unique circumstances will be accounted for on an individualized basis.

Data on the contingent fees set by IRPAs at various points during this litigation also support a reasonable cap of 22%. Professor Rubenstein evaluated 640 IRPA contracts in this case and found that the contingent fee rates "range from a low of 15% to a high of 40%, with a median of 30% and a mean of 29%." *Id.* As the risk involved in the litigation decreased, the contracted-for rates also decreased. *Id.* at 28-29. These later contingent fee rates range between 20-25%. *Id.* at 29. Thus, the market rate for IRPAs in this case indicates that a 22% fee cap is reasonable under the current circumstances.

Comparison to fee caps in other cases confirms that a 22% fee cap here is reasonable. As Professor Rubenstein noted:

> Courts in cases with similar settlement structures – *i.e.*, cases involving both central aggregate lawyers and IRPAs – have capped contingent fees in the past. In six such cases, courts set total fee caps (for both the aggregate lawyers and IRPAs) ranging from 20% to 37.18%, with an average of 32.25%; these six data points yielded effective IRPA fees ranging from 18% to 33.5%, with an average of 23.69%. In another set of seven cases, courts more directly capped IRPA rates, with those caps ranging from 5% to 33.33%, with an average of 17.95%. The average IRPA cap across all 13 cases is 20.6%. An eighth court simply awarded IRPAs a flat fee cap of $10,000 for processing claims through the class action settlement.

Id. at 30.

In light of these considerations, including the amount of attorneys' fees charged by both Class Counsel and IRPAs, I conclude that a fee cap of 22% for IRPAs is reasonable.[5]

C. Petitions to Deviate from the Fee Cap

I adopt Professor Rubenstein's conclusion that counsel and their clients should be given the opportunity to petition the Court to deviate from this cap in exceptional or unique circumstances.[6] I further adopt Professor Rubenstein's non-exhaustive list of circumstances that might provide a party a basis to deviate from this presumptive fee. *See id.* at 32-33. As in all

[5] As noted in the common benefit fund opinion also issued today, the Court is reserving judgment on Class Counsel's request for a 5% holdback of all Monetary Awards as a precaution to ensure sufficient funds to pay for implementation of the Settlement. Currently, the Claims Administrator is withholding that 5% from the fee of each IRPA. Therefore, while the Court's determination remains pending, this practice will continue. The precautionary 5% withholding effectively lowers the IRPA fee cap to 17% until further notice. The Court hopes that the 5% holdback will not be necessary for implementation. However, even if the effective 17% cap is final, the Court notes that it would also be reasonable based on Professor Rubenstein's calculation that the average direct fee cap for IRPAs is 17.95%, s*ee* Expert Report 30, and his initial recommendation and support for a 15% fee cap, *see id.* at 1.

[6] Certain interested parties contend that the fee cap violates their procedural due process rights. Prior to my decision to institute a fee cap, however, IRPAs were given an opportunity to respond to Professor Rubenstein's recommendations for a fee cap contained in both his initial Expert Report and his Expert Reply. Additionally, they still have the opportunity to petition the Court to deviate from the cap in exceptional or unique circumstances.

cases relating to contingent fee agreements, attorneys are required to demonstrate by a preponderance of the evidence that the fee requested is reasonable. *Id.* at 33; *see also McKenzie I*, 758 F.2d at 100. These petitions will be referred to the Honorable David R. Strawbridge, United States Magistrate Judge for the Eastern District of Pennsylvania,[7] for review in accordance with 28 U.S.C. § 636.

V. CONCLUSION

For the reasons set forth above, fees to IRPAs will be capped at 22% plus reasonable costs unless the terms of a contingent fee contract reflect a rate lower than the 22% fee cap, in which case the lower fee will apply. In exceptional or unique circumstances, the Court will entertain petitions seeking an upward or downward deviation from the presumptive fee cap.

s/Anita B. Brody

ANITA B. BRODY, J.

[7] If necessary, these petitions may be referred to another United States Magistrate Judge for the Eastern District of Pennsylvania.

Copies **VIA ECF** on _____ to:

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	No. 2:12-md-02323-AB MDL No. 2323
Kevin Turner and Shawn Wooden, on behalf of themselves and others similarly situated, Plaintiffs, v. National Football League and NFL Properties, LLC, successor-in-interest to NFL Properties, Inc., Defendants.	**Hon. Anita B. Brody**
THIS DOCUMENT RELATES TO: ALL ACTIONS	

ORDER

AND NOW, this _5th __ day of April, 2018, in accordance with the fee cap Memorandum issued on April 5, 2018, it is **ORDERED** that fees to IRPAs are capped at 22% plus reasonable costs unless the terms of a contingent fee contract reflect a rate lower than the 22% fee cap, in which case the lower fee will apply. In exceptional or unique circumstances, the Court will entertain petitions seeking an upward or downward deviation from the presumptive fee cap.

It is further **ORDERED** that, pursuant to 28 U.S.C. § 636, all petitions seeking an upward or downward deviation from the presumptive fee cap are **REFERRED** to the Honorable David R. Strawbridge, United States Magistrate Judge for the Eastern District of Pennsylvania.

Judge Strawbridge is authorized to promulgate the rules and procedures governing IRPAs' contingent fees.

s/ Anita B. Brody

_____
ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to:

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	No. 2:12-md-02323-AB MDL No. 2323 **Hon. Anita B. Brody**
Kevin Turner and Shawn Wooden, *on behalf of themselves and others similarly situated*, Plaintiffs, v. National Football League and NFL Properties LLC, successor-in-interest to NFL Properties, Inc., Defendants.	
THIS DOCUMENT RELATES TO: ALL ACTIONS	

A08

~~[PROPOSED]~~ ORDER

AND NOW, this 12th day of April, 2018, in accordance with this Court's Memorandum Opinion and its Order, both dated April 5, 2018 [ECF Nos. 9860, 9861];

It is hereby **ORDERED** that the Fund Administrator for the Attorneys' Fees Qualified Settlement Fund ("AFQSF") shall pay the sum of one hundred thousand dollars ($100,000) as an incentive award to each of the following from the AFQSF: Plaintiffs and Class Representatives Shawn Wooden; the estate of Corey Swinson; and the estate of Kevin Turner; and,

It is hereby further **ORDERED** that the Fund Administrator shall pay each of the firms listed below, which submitted common benefit expenses contained in the Fee Petition, filed on February 13, 2017 [ECF Nos. 7151-06 to 7151-26], and the Declaration of Christopher A. Seeger in Support of Proposed Allocation, dated October 10, 2017 [ECF No. 8447], at ¶15, the amounts, as set forth below, from the AFQSF, as reimbursement for the common benefit costs and expenses incurred by those firms:

Firm Name	Expenses
Seeger Weiss LLP	$ 1,498,690.99
Anapol Weiss	$ 1,031,971.55
Podhurst Orseck, PA	$ 771,127.79
Locks Law Firm	$ 639,160.00
Levin Sedran & Berman	$ 519,893.97
Hausfeld LLP	$ 165,468.47
Zimmerman Reed LLP	$ 135,545.72
Pope McGlamry	$ 125,137.01
Kreindler & Kreindler LLP	$ 120,832.04
The Dugan Law Firm	$ 118,880.16
NastLaw LLC	$ 117,138.64
Rose, Klein & Marias LLP	$ 112,168.64
McCorvey Law, LLC	$ 104,155.65
Casey, Gerry, Schenk LLP	$ 86,651.72
Mitnick Law Office, LLC	$ 83,082.20
Hagen, Rosskopf & Earle, LLC	$ 16,998.08
Goldberg, Persky & White, P.C.	$ 11,823.78
Girard Gibbs LLP	$ 8,300.11
Prof. Samuel Issacharoff	$ 7,302.22
Girardi Keese	$ 5,509.15
Reinhardt Wendorf & Blanc	$ 1,480.57
Spector Roseman Kodroff & Willis	$ 1,460.92
Total	**$5,682,779.38**

It is further **ORDERED** that each of the incentive award recipients and the law firms listed above shall cooperate with the Fund Administrator of the AFQSF to effectuate this Order.

ANITA B. BRODY, J.

Copies via ECF on

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	No. 2:12-md-02323-AB MDL No. 2323
Kevin Turner and Shawn Wooden, on behalf of themselves and others similarly situated, Plaintiffs, v. National Football League and NFL Properties, LLC, successor-in-interest to NFL Properties, Inc., Defendants.	**Hon. Anita B. Brody**
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EXPLANATION AND ORDER

On April 5, 2018, I issued a Memorandum Opinion awarding Class Counsel $106,817,220.62 in attorneys' fees. Today I address the allocation of those funds among Class Counsel for their work in securing the Settlement Agreement.

I. Background

This case began as an aggregation of lawsuits brought by former Players against the NFL Parties for head injuries sustained while playing NFL football. This Settlement was secured without formal discovery, with limited litigation of motions, and with no bellwether trials. Instead this case was litigated through negotiations that were supported by a creative legal framework that survived rigorous appellate challenge.

On January 31, 2012, the MDL was formed and proceedings were centralized in this Court. In July of 2013, I ordered the parties to engage in mediation and I appointed retired

United States District Court Judge Layn Phillips as mediator. ECF No. 5128. The parties worked intensely in this negotiation, at times around the clock. A Term Sheet was executed on August 29, 2013. ECF No. 5235.

Following the announcement of a term sheet, the parties continued to negotiate, working out the detailed terms of the Settlement Agreement. Recognizing the complicated financial aspects of the proposed settlement, I appointed Perry Golkin as Special Master to aid me in my evaluation. ECF No. 5607. On January 6, 2014, the parties submitted a motion for preliminary approval of a class action settlement. ECF No. 5634. Though I believed the efforts in the negotiation were commendable, I denied the motion because I had concerns about the cap on the Monetary Award Fund. ECF No. 5658.

Diligently, the parties returned to their negotiations, working intensely through June of 2014 to further analyze the economic data to construct a fund that would ensure payment to the class members over the full 65-year term of the Agreement. On June 25, 2014, the parties submitted a revised proposed Settlement Agreement, which provided an uncapped Monetary Award Fund. ECF No. 6073. As with the first proposed settlement, the parties chose to structure the case as a class action, which subjected the Settlement Agreement to the challenges of compliance with Federal Rule of Civil Procedure 23. On July 7, 2014, I granted preliminary approval. ECF No. 6083. I instructed Co-Lead Class Counsel to ensure that notice was given to the class, and I set a schedule for an objection procedure and a fairness hearing. ECF No. 6084.

After the Fairness Hearing, I ordered the parties to return to the bargaining table to consider making the following changes:

- Allow credit for Eligible Seasons when a Player was playing in the World League of American Football, the NFL Europe League, and the NFL Europa League;

- Revise the funding limitations to the BAP to ensure that all eligible players would receive a BAP baseline assessment;
- Revise the date for the Qualifying Diagnosis of Death with CTE;
- Add a hardship exemption for fee to appeal an award determination; and
- Allow a reasonable accommodation for *force majeure* type events that preclude class members from obtaining medical records.

ECF No. 6479.

On February 13, 2015, the parties agreed to the proposed changes and submitted an amended settlement. On April 22, 2015, I certified the class and approved the Settlement Agreement. ECF No. 6509.

Following my approval, Class Counsel turned their attention to the defense of the class certification under Rule 23 and the approval of the Settlement Agreement. On April 18, 2016, the Third Circuit Court of Appeals affirmed. *In re National Football League Players Concussion Injury Litigation*, 821 F.3d 410 (3d Cir. 2016). The Circuit Court's opinion was challenged through two petitions for writ of certiorari that were submitted to the United States Supreme Court. The petitions were denied on December 12, 2016. The Settlement became effective on January 7, 2017.

As a part of the Settlement Agreement, the NFL Parties agreed to pay $112.5 million dollars in fees to Class Counsel. On April 5, 2018, I approved Co-Lead Class Counsel's petition for the award of attorney's fees for the full amount. On that same date, I approved the incentive awards for class representatives and awarded the payment of $5,682,779.38 in expenses to Class Counsel. *In re National Football League Players' Concussion Injury Litigation,* No. 2:12-MD-02323-AB, 2018 WL 1635648 (E.D. Pa. April 5, 2018).

On September 11, 2017, I ordered Co-Lead Class Counsel, Christopher Seeger to submit a proposal for the allocation of lawyers' fees among Class Counsel. ECF No. 8367. Mr. Seeger

submitted a detailed proposal on October 10, 2017. ECF No. 8447. I also invited any party seeking payment of class benefit fees to submit a counter-declaration. ECF No. 8448. On May 15, 2018, I convened a hearing and allowed any party seeking class benefit payment the opportunity to explain their position and basis for the fee requests.[1]

In the April 5th Fee Opinion, I observed that a portion of the $112.5 million would be used to pay Class Counsel's fees for securing the Settlement Agreement and would be used for the implementation of the Settlement Agreement. Today I allocate $85,619,466.79 to Class Counsel for their work in securing the Settlement Agreement. I continue to hold the remaining funds in reserve to pay Class Counsel for their services in supporting the class through the implementation of the 65-year term of this Agreement.[2]

II. Discussion

This Settlement was obtained through a complex, multi-tracked mediation effort. It required a pioneering effort by Class Counsel, which allowed for the formation of a legally adequate class despite player differences. The relatively quick resolution allowed impaired Class Members to receive compensation and access to treatment as quickly as possible. The Parties made it clear to me that certification of this case as a class action was a keystone to negotiations. But, Rule 23 and the related case law made class certification in personal injury cases a challenge. Class Counsel's creativity in structuring a certifiable class against this legal landscape

[1] In advance of this hearing, I required all firms seeking payment for class benefit services to provide declarations related to the illegal assignment of Class Member Awards to Third-Party Funders. I have decided not to take action on that information at this time.

[2] The Settlement Agreement allowed for a reduction of individual Awards by up to 5% to pay implementation fees to Class Counsel. In my April 5, 2018 opinion, I indicated that I believed a determination of the need for additional funds was premature at this time. In an abundance of caution, I have instructed the Claims Administrator to hold 5% of all Awards in reserve. I will revisit Class Counsel's request for additional funds to be paid from that holdback at a later date.

and persuading this Court, the Third Circuit, and United States Supreme Court was groundbreaking.

Factors Considered in Calculation of the Multipliers

In his proposed allocation, Co-Lead Class Counsel indicated that he used three broad criteria in calculating his proposed allocation: (1) appointed leadership roles in the litigation; (2) "meaningful" involvement in the litigation from beginning to end; and (3) value of the contribution to the settlement negotiations and defense of the Settlement on appeal.

I will address Co-Lead Class Counsel's third factor first, because I believe it most important. Under present case law, establishing class certification under Rule 23 in mass tort cases is challenging. One of Class Counsel's most important contributions was the creation and negotiation of the necessary provisions that allowed for a settlement under these legal rigors. Class Counsel's innovative terms formed through rigorous negotiation and then defended at the appellate level were outstanding. I place a very high value on the legal acumen necessary to construct and defend this unique settlement.

Secondly, credit should be given to attorneys who were meaningfully involved in this litigation from the earliest stages through to the hard fought appeal. The lawyers that advanced the interests of the class for the full five years of negotiation and defense deserve to be compensated for this work.

Relatedly, several objectors have requested that I consider the common benefit work performed prior to the formation of the MDL. At the start of the MDL proceedings, I adopted the protocol proposed by Plaintiffs' leadership as it related to the submission of fees and expenses. Those regulations prohibited the submission of hours for work performed prior to the

formation of this MDL. ECF No. 3710. As is noted below, I have considered work done prior to the formation of the MDL through an increase in the firm's multiplier where applicable.

Finally, the fact that a firm has a leadership role in this MDL/Class Action is a factor that should be considered in the fee allocation. But, membership in the Plaintiff's Executive Committee (the "PEC") and the Plaintiff's Steering Committee (the "PSC"), standing alone, is insufficient to merit anything greater than a 1.0 "multiplier." In constructing the PSC and PEC, Plaintiffs provided a list of the tasks that were delegated to the PSC, almost all of which were never necessary to the advancement of this case. ECF No. 54, at 2-4. Thus, members of the PEC and PSC are entitled to payment for the work performed at reasonable billing rates, but, without more, are not entitled to an enhancement of those fees.

Some attorneys have argued that they incurred more risk by taking on large numbers of clients. They argue that their contribution of "critical mass" is a factor worthy of a multiplier. I disagree. Every attorney involved in this litigation has taken on the risk that work will be performed, but no payment will be received. Attorneys who worked a high number of hours advancing the interests of large numbers of clients certainly incurred great risk, but risk incurred for individuals must be paid by those individuals.[3] On the other hand, attorneys who worked a high volume of hours advancing the interest of the Class incurred a high risk for the Class. That is the type of risk that should be paid through a class benefit multiplier.

[3] Actually, as Professor Rubenstein noted, the economies of scale actually benefit firms that took on large volumes of clients. ECF No. 9526 at 32-33. Though these attorneys have taken on a greater volume of risk, they have actually taken on less risk on a client by client basis. Either way, this is risk attributable to their representation of individual clients, not their risk as it relates to the Class.

Billing Rates Used

As to the lodestars submitted here, I have previously expressed my concerns about the billing rates submitted by some firms. *See In re National Football League Players' Concussion Injury Litigation*, 2018 WL 1635648, *9. In seeking the appointment of the PEC and PSC, the attorneys indicated that they had "reached consensus to establish reasonable uniform hourly rates for all partners, associates and paralegals conducting work that benefits all plaintiffs for purposes of reimbursement for fees from the Common Benefit Fund and for lodestar check…." ECF No. 54. Despite this, the hourly rates submitted here were not uniform and these agreed rates have not been provided to the Court. The lodestars submitted break the hours worked into groups of partners, of counsel, associates, staff attorneys and contract attorneys, and paralegals. I have taken the average billing rate[4] for each of these categories to use as a reference. Where the overall firm rate has exceeded the rate using these averages, I have adjusted the billing rates. Where an adjustment is made, it is noted below.

The Process to Determine this Allocation

I concluded that this specific case would be most equitably resolved by allowing Co-Lead Class Counsel to recommend an allocation. I chose this approach because this case was resolved through intensive negotiations, as opposed to widely reviewed discovery, depositions, and bellwether trials. Co-Lead Class Counsel had a front row seat for the negotiations and the legal rigors of the appellate process. His perspective is unique and important. This approach is not unusual and has been endorsed by other courts, including courts in this district. *See, e.g.*, *Milliron v. T-Mobile, USA, Inc*., 423 F. App'x 131, 134 (3d Cir. 2011); *In re Processed Egg*

[4] The average billing rate for partners is $758.35. The average billing rate for "of counsel" attorneys is $692.50. The average billing rate for associates is $486.67. The average billing rate for contract attorneys is $537.50. The average billing rate for paralegals is $260.00.

Prods. Antitrust Litig., No. 08-2002, 2012 WL 5467530, at *7 (E.D. Pa. Nov. 9, 2012); *accord In re Linerboard Antitrust Litig.*, 333 F. Supp. 2d 343, 351-52 (E.D. Pa. 2004).

Since it is my obligation to "evaluate what Class Counsel actually did and how it benefitted the class," *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 342 (3d Cir. 1998), I asked Class Counsel to submit his recommendation and then allowed other attorneys to object to the proposed allocation, both in pleadings and in open court. The path of this litigation has also provided me with a very full picture of the roles and responsibilities of the different attorneys in this litigation. As a result, I believed that delegating the allocation to a special master or Magistrate Judge for a report was not advantageous.

The Firm-by-firm Fee Requests

I will address each firm in Co-Lead Class Counsel's fee petition in alphabetical order, setting out the amount of the allocation and the factual basis underlying my conclusion. I will then address the fee petitions of the Objectors.

1. Anapol Weiss.

Anapol Weiss made contributions to this litigation from its outset to its conclusion. I appointed Sol H. Weiss of Anapol Weiss as Co-Lead Class Counsel in this case, having been selected for that role by the PEC. ECF No. 72. Larry E. Coben was appointed to serve as a member of the PEC.

Anapol Weiss was actively involved in the construction and negotiation of the Settlement Agreement. As was reported by Co-Lead Class Counsel, Mr. Weiss "attended many of the settlement meetings and mediations with the NFL. Mr. Weiss, and his partner, Mr. Coben, assisted in negotiating the battery of tests for the BAP and dealt with other matters relating to the medical issues underpinning the Settlement. Mr. Weiss was active in the settlement process,

including review and comment on the drafts of the Settlement Agreement. Messrs. Weiss and Coben met with and assisted in preparing scientists and physicians who submitted declarations in support of the Settlement." ECF No. 8447, at 7.

Anapol Weiss was one of the firms involved in this litigation from start to finish. They were also responsible for filing the first federal case (*Easterling v. NFL*, Civil Action No. 11-5209) on August 17, 2011. Prior to the formation of the MDL, Anapol Weiss played a leadership role in bringing plaintiffs' counsel together. I have given some weight to this pre-MDL work in the calculation of their multiplier.

Anapol Weiss submitted 4,241.20 hours for a lodestar of $1,857,436.00. Based on the contributions and the nature of the work performed by Anapol Weiss, including the firm's pre-MDL work, I award them $4,643,590.00, which amounts a 2.5 multiplier on the firm's lodestar.

2. Casey Gerry Schenk.

David Casey was appointed to serve on the PSC. Mr. Casey and his partner, Fred Schenk also served on the Communications Committee. Co-Lead Class Counsel has recommended that work performed as a member of the Communications Committee is not enough, standing alone, to merit an enhancement through a multiplier. As discussed above, Co-Lead Class Counsel supervised all aspects of this settlement negotiation. I respect his unique position in evaluating the impact of the committee's work on the over-all settlement, and I accept his conclusion about the proper multiplier to be used.

Casey Gerry Schenk submitted 417.40 hours for a lodestar of $333,920.00. This lodestar utilized rates that exceeded the average rates I have identified. I award the firm $316,533.51, which is the full amount of the adjusted lodestar.

3. Dugan Law Firm.

James Dugan was selected to serve on the PSC and served on the Discovery and Preemption Committees.

The Dugan Law Firm submitted 293.90 hours for a lodestar of $188,340.50. I award the full amount of the firm's lodestar.

4. Girard Gibbs.

Daniel Girard and Amanda Steiner worked with Co-Lead Class Counsel, experts, and co-counsel to obtain Final Approval of the Settlement and assisted in the defense of the Settlement Agreement after Final Approval. I accept Co-Lead Class Counsel's characterization of the firm's contribution to the defense of the settlement, which I believe is one of the most complex aspects of the work done in this case.

Girard Gibbs submitted 373.10 hours for a lodestar of $279,489.00. I will award the firm $335,386.80, which amounts a 1.2 multiplier on the firm's lodestar.

5. Girardi Keese.

I appointed Thomas V. Girardi and Graham LippSmith of Girardi Keese to serve as members of the PEC. Additionally, Girardi Keese, along with Goldberg Persky & White and Russomanno & Borello, brought the first two cases that were filed in this litigation: *Maxwell v. NFL* (filed July 19, 2011) and *Pear v. NFL* (filed August 3, 2011).

The firm has submitted their pre-MDL hours as an exhibit to their objections. I have considered that submission and considered the work done by the firm prior to the formation of the MDL. This pre-MDL work has provided the basis for the multiplier that I have chosen.

This firm submitted 628.70 hours for a lodestar of $448,190.00. This lodestar utilized rates that exceeded the average rates I have identified. In consideration of the firm's leadership

on the PEC and their pre-MDL common benefit work, I award the firm $526,548.33, which amounts to a 1.2 multiplier on the adjusted lodestar.

6. Goldberg, Persky & White.

Goldberg, Persky & White was not a member of the PEC or the PSC, but the firm (along with Girardi Keese and Russomanno & Borello) filed the first two cases in this litigation: *Maxwell v. NFL* (filed July 19, 2011) and *Pear v. NFL* (filed August 3, 2011).

I am aware of Jason Luckasevic's work in mounting litigation against the NFL, including his relationship with Dr. Bennet Omalu, who was a pioneer in the discussion of CTE. This pre-MDL work has provided the basis for the multiplier that I have chosen.

Goldberg, Persky & White submitted 500.60 hours for a lodestar of $262,860.00. To ensure that the firm receives an appropriate value for their pre-MDL work, I award them $328,575.00, which amounts a 1.25 multiplier on the firm's lodestar.

7. Hagan, Rosskopf & Earle.

Bruce Hagen served on the Communications Committee of the PSC.

Mr. Hagen has submitted objections, documenting the various tasks he completed for the Communications Committee. I have reviewed these, but the arguments do not alter my belief that the services performed by members of the Communications Committee do not merit a multiplier. This is not to say that the work of the committee did not make a difference in this litigation. The issue here is whether that work made such a difference that counsel's ordinary fees should be subject to an enhancement. Upon review of all the pleadings (including the information presented by others who were members of the Communications Committee), I have concluded that membership in the Communications Committee, without more, is not entitled to a multiplier.

Hagen, Rosskopf & Earle submitted 540.80 hours for a lodestar of $324,480.00, which I award them in full.

8. Hausfeld.

I appointed Richard Lewis and Michael D. Hausfeld to serve as members of the PEC. Additionally, Hausfeld associate, Jeannine M. Kenney, served as the Court-appointed Plaintiffs' Liaison Counsel, and assisted Co-Lead Class Counsel in organizing communications with and between the PEC, the PSC and Co-Lead Class Counsel.

Mr. Lewis also served on the Legal Committee where he conducted factual and legal research in preparation for, and drafting of, the Master Administrative Personal Injury and Medical Monitoring Class Action Complaints, and opposing the NFL Parties' efforts to dismiss Plaintiffs' claims.

Hausfeld submitted 1,281.80 hours for a lodestar of $763,917.50. This lodestar utilized rates that exceeded the average rates I have identified. I award the firm $914,903.77, which amounts a 1.3 multiplier on the adjusted lodestar.

9. Herman, Herman & Katz.

At the direction of Co-Lead Class Counsel, Herman Herman & Katz provided research and preparation of materials applicable to the cause and treatment of concussions that assisted in the development of the terms and conditions of the Settlement. The firm was uniquely positioned to assist through the aid of Joseph Kott, who brought the experience of over 20 years of practicing neurosurgery prior to becoming of counsel.

Herman Herman & Katz submitted 136.30 hours for a lodestar of $89,660.00. I award the full amount of the firm's lodestar.

10. Professor Samuel Issacharoff.

One of the keystones to this litigation was overcoming the challenge presented by Rule 23 in the personal injury context. In hindsight, it is clear that this was not an insurmountable obstacle. The creative construction of the Settlement Agreement as well as an intelligent approach to the case law made the defense of this Settlement look almost easy. But, that hindsight cannot control our evaluation. The Settlement in this case was a pioneering effort, not just on the science, but also on the law.

Professor Issacharoff's persuasive appellate advocacy and knowledge of class action jurisprudence was invaluable to the Class. Though Professor Issacharoff's presence is most obviously seen in his appellate pleadings and argument, that contribution was only part of his work. As Co-Lead Class Counsel explains, Professor Issacharoff was influential in the settlement negotiations, which were conducted with an eye toward the potential Rule 23 issues. ECF No. 8447, at 9.

Several objectors take issue with the multiplier proposed by Co-Lead Class Counsel. These arguments arise out of a fundamental misunderstanding of the nature of the agreement that was reached in this case. Settlement required the creation of a class. The complexity of the law in this area required an expert who could help construct an agreement that would withstand the rigors of the appellate process. If that process looked easy, it was due to Professor Issacharoff's skill.

Professor Issacharoff submitted 801.75 hours for a lodestar of $800,512.50. As a member of the "team," however, the professor was obligated to comply with the same restrictions on billing rates as law firms seeking common benefit payments. I have, therefore,

adjusted the billing rates used to comply with the average rate I used for billing by law firm partners. I award $1,976,012.00, which amounts a 3.25 multiplier on the adjusted lodestar.

11. Kreindler & Kreindler.

Anthony Tarricone co-chaired the Communications Committee of the PSC, which was an active committee during the negotiations and in the public defense of the Settlement. As Co-Lead Class Counsel explained, "Mr. Tarricone helped develop an effective media campaign to ensure the dissemination of accurate information to interested media, and counter misinformation concerning the Settlement to potential class members." ECF No. 8447, at 9.

The objections submitted by Mr. Tarricone, along with the objections submitted by the other members of the Communications Committee, have provided me with a full picture of the work performed by the committee. Co-Lead Class Counsel has also presented me with detailed information on his views related to the impact of the Communications Committee on the overall litigation. Mr. Tarricone was co-chair of the committee and for that leadership I believe that he is entitled to a multiplier. Other than the firms that I appointed as Class Counsel and Professor Issacharoff, no firm will be paid more than the Kreindler firm. It is entirely clear to me that this payment is well-earned. It is equally clear to me that a higher multiplier is not appropriate.

Kreindler & Kreindler submitted 1,573.00 hours for a lodestar of $1,258,400.00. This lodestar utilized rates that exceeded the average rates I have identified. I award the firm $1,491,097.30, which amounts to a 1.25 multiplier on the adjusted lodestar.

12. Levin Sedran & Berman.

Levin Sedran & Berman provided meaningful support of this litigation from start to finish. Arnold Levin was selected to serve as a member of the PSC, and was later appointed Subclass Counsel for Subclass 1. Mr. Levin was an active participant in the negotiations that led

to the Settlement Agreement. Co-Lead Class Counsel credits Mr. Levin with his role in the negotiations regarding "class and subclass definitions, a preliminary injury grid, and foundation for the Baseline Assessment Program." ECF No. 8447, at 9. Additionally, Mr. Levin and Sandra L. Duggan assisted with negotiations related to players in Subclass 2 with Dianne Nast, Subclass Counsel for Subclass 2.

At the direction of Co-Lead Class Counsel, the firm assisted with research on a number of topics relevant to the strength and viability of Plaintiffs' claims, including medical monitoring, tolling, preemption, and fraudulent concealment, while assisting in the preparation of the Master Administrative Personal Injury and Medical Monitoring Class Action Complaints. The firm continued its support of the Settlement through Rule 23 appeals and arguments to the Third Circuit.

This firm submitted 4,862.75 hours for a lodestar of $4,573,438.75. This lodestar utilized rates that exceeded the average rates I have identified. I award the firm $8,411,720.45, which amounts a 2.25 multiplier on the adjusted lodestar.

13. Locks Law Firm.

The Locks Law Firm was involved in the leadership of this litigation. I appointed Gene Locks and David Langfitt to serve as members of the PEC. Later in the litigation I appointed Mr. Locks to serve as Class Counsel. Mr. Langfitt worked with two other PEC members to draft the Master Administrative Personal Injury and Medical Monitoring Class Action Complaints, and was involved in preparing the opposition to the NFL's motion to dismiss on the grounds of preemption.

Though present early in this litigation, the firm's role did not continue throughout the appellate support of the Settlement. I accept Co-Lead Class Counsel's assessment that the firm

did not play an active role in either the settlement negotiations or the defense of the Settlement on appeal. I also have to respect Co-Lead Class Counsel's concerns about the impact of Mr. Locks' interview with *Businessweek*, since Co-Lead Class Counsel led the negotiations with the NFL and is best positioned to advise me on this matter.

Ultimately, I conclude that the Locks firm is entitled to a multiplier for the leadership role they played in this litigation, but their failure to provide meaningful support for other crucial aspects of this process is the basis for the multiplier that I have chosen. The firm, however, will be compensated more than $3.8 million for their services – only four other firms will receive a higher payment from the common benefit fund.

The Locks Law Firm submitted 4,243.00 hours for a lodestar of $3,084,500.00. I award the firm $3,855,625.00, which amounts a 1.25 multiplier on the firm's lodestar.

14. McCorvey Law.

Derriel McCorvey was selected to serve on the PSC. Mr. McCorvey also served on the Communications Committee. The firm, like many others, stood ready to perform additional work, but none was assigned because of the nature of this Settlement. I have no doubt that McCorvey Law could have provided additional positive support had this litigation taken a different path. Ultimately, however, I must assess the work actually performed.

McCorvey Law submitted 331.30 hours for a lodestar of $198,780.00. I award the full amount of the firm's lodestar.

15. Mitnick Law.

Mitnick Law was not a member of the PEC or PSC, but served at the direction of Co-Lead Class Counsel in the multi-faceted outreach efforts to the Retired NFL Player Community, including in person events with alumni and other NFL players' associations.

Mitnick Law submitted 1,198.15 hours for a lodestar of $898,612.50. Co-Lead Class Counsel proposed multiplier of .75 for Mitnick Law's allocation in this matter. Though Mr. Mitnick initially submitted objections to the proposed allocation, he subsequently *withdrew* those objections, stating, "After much thought and deliberation, I have realized how much time and energy Mr. Seeger and his firm have put into the NFL concussion litigation, its successful resolution and their recommendation for the allocation of common benefit fees. If not for Mr. Seeger's efforts, there is no doubt that this case would have never materialized as quickly as it did." ECF No. 8917.

Despite withdrawing his objection, Mitnick Law submitted a fee petition on May 11, 2018 and appeared before me on May 15, 2018 to argue for fees beyond those recommended by Co-Lead Class Counsel. The time for submitting fee petitions has long passed. I set a deadline of October 27, 2017 for the submission of all requests for fees. ECF No. 8448. Yet in the interest of fairness, I have reviewed the fee petition and I have considered Mr. Mitnick's "objections" submitted during the May 15, 2018 Hearing. I have also reviewed Co-Lead Class Counsel's explanation of the impact of the work performed by Mitnick Law. I do not find Mr. Mitnick's arguments persuasive.

I award Mitnick Law $673,959.38, which amounts a .75 multiplier on the adjusted lodestar.

16. NastLaw.

NastLaw provided strong leadership throughout this litigation. Dianne Nast was selected to serve as a member of the PSC, and was later appointed to serve as Subclass Counsel for Subclass 2.

Co-Lead Class Counsel credits NastLaw as one of only six firms that "made contributions from the outset of the litigation all the way to its end." ECF No. 8447-2 at 4. The firm was actively involved from the outset of the litigation, including preparation for, and drafting of, the Master Administrative Personal Injury and Medical Monitoring Class Action Complaints and opposing the NFL Parties' efforts to dismiss Plaintiffs' claims. Ms. Nast participated in settlement negotiations with the NFL Parties as counsel for Subclass 2. The firm also supported efforts in defending the Settlement after Preliminary Approval.

Nast Law submitted 1,211.75 hours for a lodestar of $765,060.25. This lodestar utilized rates that exceeded the average rates I have identified. I award the firm $1,090,636.06, which amounts a 1.5 multiplier on the adjusted lodestar.

17. Podhurst Orseck.

Podhurst Orseck supported the Settlement in all three important phases in the litigation. I appointed Stephen Marks and Ricardo M. Martinez-Cid to serve as members of the PEC. Later in the litigation, I appointed Mr. Marks to serve as Class Counsel. Mr. Marks served as co-chair of two committees, including the Communications Committee, Mr. Martinez-Cid also served as co-chair of two committees, and Stephen Rosenthal serves as one of the co-chairs of the Legal Committee, which drafted the Master Administrative Personal Injury and Medical Monitoring Class Action Complaints and opposition to the NFL Parties' efforts to dismiss Plaintiffs' claims. Podhurst was counsel for two individuals who served as Class Representatives in this matter.

Podhurst provided meaningful contributions throughout this litigation. Co-Lead Class Counsel credits Mr. Marks with his important work during settlement negotiations, including in early face-to-face negotiations with the NFL Parties. Also, importantly, Mr. Marks and his firm continued to provide support for the Settlement through Final Approval.

Podhurst Orseck submitted 4,510.80 hours for a lodestar of $3,005,744.50. This lodestar utilized rates that exceeded the average rates I have identified. I award the firm $6,048,169.49, which amounts a 2.25 multiplier on the adjusted lodestar.

18. Pope McGlamry.

Mike McGlamry was selected to serve as a member of the PSC. Mr. Glamry served on the Communications Committee. Several of the firm's shareholders served on a variety of committees and would certainly have provided important services to the Class had this litigation taken a different path to resolution. However, I agree with Co-Lead Class Counsel's conclusion that the firm's ultimate role was not significant enough to merit a multiplier.

Pope McGlamry submitted 1,274.90 hours for a lodestar of $829,030.00. I award the full amount of the firm's lodestar.

19. Rheinhart Wendorf & Blanchfield.

Garrett Blanchfield served on two committees. The firm submitted 23.10 hours for a lodestar of $14,899.50. I award the firm $11,174.63, which amounts a .75 multiplier on the submitted lodestar.

20. Rose, Klein & Marias

David Rosen was selected to serve on the PSC and served on the Communications Committee, the Workers' Compensation Committee, and the Lien and Ethics Committees. I have already addressed both Co-Lead Class Counsel's explanation and my conclusion about the role of the Communications Committee. As to the additional committees referenced, these groups did not provide the type of support of the Settlement that would entitle counsel to a multiplier.

The firm submitted 243.03 hours for a lodestar of $157,969.50. I award the full amount of the firm's lodestar.

21. Seeger Weiss

Because of the path taken by this litigation, the role played by Seeger Weiss was more significant than other firms. Following the Initial Organizational Conference, I appointed Chris Seeger to be Co-Lead Class Counsel in this litigation. ECF No. 64. I also appointed Seeger Weiss partner David Buchanan to serve as a member of the PEC.

Mr. Seeger led the negotiations that resulted in this historic settlement. Mr. Seeger and Mr. Buchanan led every session of negotiations with the NFL Parties. And they led every meeting of plaintiffs' counsel who assisted in the development of the Settlement Agreement.

Seeger Weiss played a key role in evaluating the complex legal issues of this case and defending the case on appeal. Upon recognizing the potential legal issues related to negotiating the Settlement under Rule 23, Seeger Weiss brought in the necessary experts to help frame the Settlement and position it effectively for the appeal. After successfully arguing for Preliminary and Final Approval of the Settlement, including the negotiation of amendments to the Settlement Agreement, Seeger Weiss took the lead in defending the Settlement on appeal. The firm worked closely with Professor Issacharoff in defending the class action settlement on appeal, up through denial of *certiorari* review by the United States Supreme Court.

Seeger Weiss has submitted 21,044 hours of fees, more than four times that submitted by other firms.[5] Some objectors have attempted to argue that Seeger Weiss did not bear much risk in this litigation. The billable hours submitted in this case speak for themselves. Collectively

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[5] Attorneys from six firms were appointed to be class counsel in this litigation. The collective hours of all five remaining firms is less than the hours submitted by Seeger Weiss.

Class Counsel submitted 51,068 hours in lodestar. That is to say that all of the firms that submitted lodestar fees risked that more than fifty-one thousand hours of work would go unpaid. That is a great risk, but it is shared among a large group. Seeger Weiss, individually, risked that more than twenty-one thousand hours of work committed to this litigation would go unpaid. That is almost half of the total risk taken on behalf of the class.

This risk did not dissipate prior to the conclusion of the appeals in this case. Seeger Weiss and Professor Issacharoff constructed a landmark legal theory to defend the settlement of this personal injury case as a class action. This was a great legal challenge that was remarkably well orchestrated both in the design of the Settlement and in the outstanding appellate advocacy that supported it.

Seeger Weiss has submitted 21,044 hours for a lodestar of $18,124,869.10.[6] This lodestar utilized rates that exceeded the average rates I have identified. I award the firm $51,737,185.70, which amounts to a 3.5 multiplier on the submitted lodestar.

22. The Brad Sohn Law Firm

Brad Sohn assisted the Ethics Committee on various matters. The Brad Sohn Law Firm submitted 50.00 hours for a lodestar of $26,250.00. I award them $19,687.50, which amounts a .75 multiplier on the firm's lodestar.

23. Spector Roseman Kodroff & Willis

William Caldes, of Spector Roseman Kodroff & Willis, served on two committees. The firm submitted 74.40 hours for a lodestar of $51,708.00. I award them $38,781.00, which amounts a .75 multiplier on the firm's lodestar.

[6] After the effective date of the settlement, Seeger Weiss has continued to provide services for the class. As set forth below, these bills will be submitted separately at a later date.

24. Zimmerman Reed

Charles Zimmerman was selected to serve as a member of the PSC and he served on the Ethics Committee.

The firm has argued that it is entitled to credit for pre-MDL work, noting that it had "formulated a case theory and filed [their] first complaints" by December of 2011. But the early submissions in this case were filed months before that – in July and August of 2011. By December of 2011, Plaintiffs' organizational meetings were already being held and the *Maxwell* and *Pear* cases were actively moving forward. The firm notes its participation in the *Dryer* litigation in 2009, but it is hard to understand how work on that entirely separate litigation should be a common benefit consideration in this litigation. I have considered this contribution in my calculation of fees for the firm.

Zimmerman Reed submitted 1,106.50 hours for a lodestar of $885,907.25. This lodestar utilized rates that exceeded the average rates I have identified. I award the firm $811,600.87, which is the full amount of the adjusted lodestar.

25. Faneca Objectors.

The Faneca Objectors have submitted a separate fee petition in this matter (ECF No. 7070), as well as objections to the allocation proposal submitted by Co-Lead Class Counsel. These Objectors claim that the final settlement incorporated four key elements that have roots in their objections:

- Credit for NFL Europe;
- The Uncapping of the BAP Fund;
- Expansion of the death with CTE qualifying diagnosis; and
- Elimination of the appeal fee in cases of hardship.

For these services, the Faneca Objectors seek $20 million for fees and expenses, which is 16.3% of the $122.6 million in value the Objectors' claim they secured for the class. While the amount sought by the Faneca Objectors is unreasonable, they are entitled to compensation for the work they performed for the class.

I appointed the firms representing the Faneca Objectors as Court-appointed liaisons to coordinate the arguments of the Objectors at the November 19, 2014 Fairness Hearing. ECF No. 6344. The firms provided a service to the Court by serving in that leadership role.

In consideration of the service provided as liaison counsel and the firms' role in providing benefits to the class, I award $350,000.00 to the firms that represented the Faneca Objectors.

26. Armstrong Objectors.

The Armstrong Objectors have submitted a separate fee petition in this matter (ECF No. 7232), as well as objections to the allocation proposal submitted by Co-Lead Class Counsel. These Objectors claim that they should be credited with many of the improvements that were also submitted by the Faneca Objectors.

I reject the claims submitted by the Armstrong Objectors. The Armstrong Objectors cannot receive credit for parroting the same objections that were made more persuasively by the Faneca Objectors.

I deny the fee petition submitted by the Armstrong Objectors.

27. Alexander Objectors.

The Alexander Objectors have filed repeated and largely redundant pleadings seeking fees for themselves and objecting to the fee petition submitted by Co-Lead Class Counsel. The firm has argued that they have provided "well over 1,000 hours attempting to improve the terms

of the settlement." ECF No. 8725, at 9-10. I have reviewed all of the pleadings filed by the Alexander Objectors and conclude that the arguments are too voluminous to restate here. Common benefit attorneys do not receive fees for unsuccessful appeals and unsuccessful objections. For that reason, the fee petition from the Alexander Objectors must be rejected.

28. Jones Objectors.

The Jones Objectors have submitted a separate fee petition in this matter (ECF No. 7364, 7555), as well as objections to the allocation proposal submitted by Co-Lead Class Counsel.

The Jones Objectors argue that they should be given fees for their objection that resulted in credit for seasons played in NFL Europe. As I have already indicated, the Faneca Objectors are entitled to credit for their work in presenting the NFL Europe objection. A comparison between the argument presented by the Faneca Objectors (ECF No. 6201 at 34-36) and the argument presented by the Jones Objectors (ECF No. 6235 at 3) speaks for itself.

I deny the fee petition submitted by the Jones Objectors.

29. Corboy & Demetrio.

Co-Lead Class Counsel has requested an allocation to Corboy & Demetrio for their work in supporting and defending the Settlement. The firm represented objectors to the initial Settlement Agreement, but ultimately worked with Class Counsel in support of the Settlement and defense of it on appeal.

I award the firm $250,000.00.

Total Payments at the Present time

As is set forth above, I approve the payment of $85,619,446.79 of the $112.5 million that I approved for payment of fees for class benefit.

At the May 15, 2018 hearing, Co-Lead Class Counsel provided me with an accounting of the funds available at the present time. $108,442,700.12 is available to pay Class Counsel for services. Accordingly, after today's allocation, $22,823,253.33 will remain in the common benefit fund. I will continue to hold these funds in reserve to pay common benefit fees as attorneys continue to work to implement this Settlement Agreement.

Class Counsel has already performed substantial work for the class in implementing this Settlement Agreement. I ask Co-Lead Class Counsel to submit a petition detailing the fees for the class benefit work that has been performed since the Effective Date of the Settlement Agreement. Going forward, fee petitions for the work done in implementing the settlement should be submitted by Co-Lead Class Counsel as he deems appropriate, but at least every six months. Class Counsel should adopt the blended billing rates used in the present allocation. In the future, Class Counsel may petition the Court for an increase in the standard billing rates, if he determines that such increase is necessary. These implementation fees will be paid on a straight lodestar basis, without the use of a multiplier.

III. Conclusion

For these reasons, I allocate $85,619,446.79 of common benefit funds to pay attorneys for their work in obtaining the Settlement in this case. I will hold in reserve the additional funds to pay for fees incurred in implementing the Settlement Agreement.

And now, this ____ day of May, 2018, it is **ORDERED** that the Fund Administrator for the Attorneys' Fees Qualified Settlement Fund ("AFQSF") shall pay each of the firms listed below the amounts, as set forth below, from the AFQSF:

Anapol Weiss $4,643,590.00

Casey Gerry Schenk $316,533.51

Dugan Law Firm $188,340.50

Girard Gibbs	$335,386.80
Girardi Keese	$526,548.33
Goldberg, Persky & White	$328,575.00
Hagen, Rosskopf & Earle	$324,480.00
Hausfeld	$914,903.77
Herman Herman & Katz	$89,660.00
Professor Issacharoff	$1,976,012.00
Kreindler & Kreindler	$1,491,097.30
Levin Sedran & Berman	$8,411,720.45
Locks Law Firm	$3,855,625.00
McCorvey Law	$198,780.00
Mitnick Law	$673,959.38
NastLaw	$1,090,636.06
Podhurst Orseck	$6,048,169.49
Pope McGlamry	$829,030.00
Rheinhart Wendorf & Blanchfield	$11,174.63
Rose, Klein & Marias	$157,969.50
Seeger Weiss	$51,737,185.70
Brad Sohn Law Firm	$19,687.50
Spector Roseman Kodroff & Willis	$38,781.00
Zimmerman Reed	$811,600.87
Faneca Objectors	$350,000.00
Corboy & Demetrio	$250,000.00

It is further **ORDERED** that each of the law firms listed above shall cooperate with the Fund Administrator of the AFQSF to effectuate this Order.

s/Anita B. Brody

ANITA B. BRODY, J.

5/24/2018

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IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	No. 2:12-md-02323-AB MDL No. 2323
THIS DOCUMENT RELATES TO: ALL ACTIONS	**Hon. Anita B. Brody**

ORDER

AND NOW, this _4th_ day of June, 2018, it is **ORDERED** that:

- The Alexander Objectors' Motion for Reconsideration/New Trial (ECF No. 9926) is **DENIED**.[1]
- The Alexander Objectors' Motion to Stay Enforcement of Attorneys' Fee Allocation Order (ECF No. 10022) is **DENIED**.

s/Anita B. Brody

ANITA B. BRODY, J.

[1] The Alexander Objectors bring their motion for "Reconsideration/New Trial" under Federal Rule of Civil Procedure 59(a)(1)(B) and Rule 59(e). Rule 59(a)(1)(B) only applies after a "nonjury trial," and is thus inapplicable. Rule 59(e) requires that the moving party must demonstrate one of the following: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion; or (3) the need to correct a clear error of law or fact or to prevent a manifest injustice. *Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999). The Alexander Objectors fail to meet this burden.

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	:	No. 2:12-md-02323-AB MDL No. 2323
	:	**Hon. Anita B. Brody**
THIS DOCUMENT RELATES TO: ALL ACTIONS	:	Civ. Action No. 14-00029-AB

ORDER REGARDING PAYMENT OF ATTORNEYS' FEES AND EXPENSES

Pursuant to the Court's continuing and exclusive jurisdiction under Article XXVII of the Amended Class Action Settlement Agreement filed on February 13, 2015 (the "Settlement Agreement"), and the May 8, 2015 Amended Final Approval Order and Judgment, **IT IS HEREBY ORDERED** as follows:

1. This Court's previous Orders concerning payment of attorneys' fees and expenses (Payment of Attorneys' Fees and Expenses on Funding Request No. 6, dated September 7, 2017 and filed at ECF No. 8357; Payment of Attorneys' Fees and Expenses on Funding Request No. 7 and Future Funding Requests, dated September 7, 2017 and filed at ECF No. 8358) are hereby rescinded.

2. In light of the Court's Memorandum of April 5, 2018 (ECF No. 9862) and corresponding Order of April 5, 2018 (ECF No. 9863), capping fees of Individually Retained Plaintiff's Attorneys' (IRPAs) fees at 22% of Monetary Awards plus reasonable costs, including the precautionary 5% withholding for the Common Benefit Fund, the Court now orders that:

    a. IRPAs representing Settlement Class Members identified on Funding Request No. 6 may release from escrow their actual fees incurred, not to exceed 22% of the Settlement Class Member's Monetary Award amount after Derivative Claimant Award deduction, minus the precautionary 5% withholding for the Common Benefit Fund, plus reasonable expenses. To the extent IRPAs representing Settlement Class Members identified on Funding Request No. 6 have retained fees and expenses in escrow that exceed the permitted compensation, those IRPAs shall ensure that the balance is promptly paid to the applicable Settlement Class Members.

    b. The Claims Administrator shall release to IRPAs the attorneys' fees and expenses the Claims Administrator has withheld, together with any investment earnings

attributable to those attorneys' fees and expenses while funds were withheld in the Monetary Award Fund, as calculated by the Trustee under the Settlement Trust Agreement.

c. To the extent IRPAs receive an amount that exceeds the authorized IRPA compensation, those IRPAs shall ensure that the balance (with appropriate interest, as stated in 2 b. above) is promptly paid to the applicable Settlement Class Members.

    i. To the extent IRPAs and/or Settlement Class Members have entered into contingency payment agreements with claims services providers (including, but not limited to, Case Strategies Group, f/k/a NFL Case Consulting, LLC, and Legacy Pro Sports, LLC), i.e., companies that purported to perform services related to registration, medical testing, preparing documentation for the filing of Claims, referrals to IRPAs and/or other acts in any way related to the Settlement on behalf of Settlement Class Members on a contingent fee basis, those payment agreements, together with any IRPA fees, are also subject to the cap of 22% of Monetary Awards plus reasonable costs, together with any IRPA contingent fee arrangement, including the precautionary 5% withholding for the Common Benefit Fund. To be clear, the contingency fees of the claims services provider and the IRPA, together, are subject to the fee cap capped at 17%.

d. IRPAs are no longer required to provide the Claims Administrator with a statement of their contracted contingency fee and expenses. Additionally, the Claims Administrator is no longer directed to withhold attorneys' fees and expenses unless required under the Rules Governing Attorneys' Liens adopted by this Court on March 6, 2018 filed at ECF No. 9760 or the Rules Governing Petitions for Deviation from the Fee Cap adopted by this Court on May 3, 2018 filed at ECF No. 9956.

SO ORDERED this _27th__day of June, 2018.

s/Anita B. Brody

Anita B. Brody
United States District Court Judge

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	:	No. 2:12-md-02323-AB MDL No. 2323
	:	**Hon. Anita B. Brody**
	:	Civ. Action No. 14-00029-AB
THIS DOCUMENT RELATES TO: ALL ACTIONS	:	

ORDER REGARDING WITHHOLDINGS FOR COMMON BENEFIT FUND

Pursuant to the Court's continuing and exclusive jurisdiction under Article XXVII of the Amended Class Action Settlement Agreement filed on February 13, 2015 (the "Settlement Agreement"), and the May 8, 2015 Amended Final Approval Order and Judgment, **IT IS HEREBY ORDERED** as follows:

1. On February 13, 2017, Co-Lead Class Counsel petitioned the Court to holdback 5% of all Monetary Awards to pay for past and future work implementing the settlement (ECF No. 7151) (the "Petition for Five Percent Holdback"). Because of this pending request, the Claims Administrator has been withholding 5% of all Monetary Awards for the Common Benefit Fund while awaiting the Court's decision on this issue (the "5% Common Benefit Fund Holdback").

2. On April 5, 2018, the Court entered a Memorandum (ECF No. 9860) reserving judgment on the holdback request in the Petition for Five Percent Holdback and directing the Claims Administrator to continue to withhold the 5% Common Benefit Fund Holdback.

3. To date, the Claims Administrator has withheld the 5% Common Benefit Fund Holdback in the Monetary Award Fund. The Court now orders that:

   (a) The Claims Administrator shall release to the Attorneys' Fees Qualified Settlement Fund established in accordance with Section 23.7 of the Settlement Agreement (the "AFQSF") the funds that the Claims Administrator has withheld in the Monetary Award Fund for the 5% Common Benefit Fund Holdback to date, together with any investment earnings attributable to those funds while they were withheld in the Monetary Award Fund, as calculated by the Trustee under the Settlement Trust Agreement.

(b) Going forward, the Claims Administrator shall release new funds withheld for the 5% Common Benefit Fund Holdback to the AFQSF as part of the monthly disbursement from the Monetary Award Fund.

SO ORDERED this __27th__day of June, 2018.

s/Anita B. Brody

_____

Anita B. Brody
United States District Court Judge

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IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	No. 2:12-md-02323-AB MDL No. 2323
THIS DOCUMENT RELATES TO: ALL ACTIONS	**Hon. Anita B. Brody**

ORDER

AND NOW, this _9th__ day of July, 2018, it is **ORDERED** that the Locks Firm's Motion for Reconsideration of the Court's Explanation and Order (ECF Nos. 10072 & 10073) is **DENIED**.[1]

s/Anita B. Brody

ANITA B. BRODY, J.

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[1] In order to prevail on a motion for reconsideration, the moving party must demonstrate one of the following: "(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion . . . ; or (3) the need to correct a clear error of law or fact or to prevent a manifest injustice." *Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999). The Locks Law Firm has not made such a demonstration.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	No. 2:12-md-02323-AB MDL No. 2323
Kevin Turner and Shawn Wooden, on behalf of themselves and others similarly situated, Plaintiffs, v. National Football League and NFL Properties, LLC, successor-in-interest to NFL Properties, Inc., Defendants.	**Hon. Anita B. Brody**
THIS DOCUMENT RELATES TO: ALL ACTIONS	

EXPLANATION AND ORDER

On April 5, 2018, I issued a Memorandum Opinion approving a common fund to be used to pay Class Counsel for securing and implementing the Settlement Agreement. ECF No. 9860.[1] I have already allocated payment to Class Counsel for their work in securing the Settlement Agreement. ECF No. 10019. On July 10, 2018, Class Counsel filed a petition seeking payment for class benefit work done between January 7, 2017 (the Effective Date of the Settlement) and May 24, 2018. ECF 10128 (the "First Verified Petition").[2] For the reasons set forth below, I

[1] The Settlement Agreement allowed for a reduction of individual Awards by up to 5% to pay implementation fees to Class Counsel. In my April 5, 2018 opinion, I indicated that I believed a determination of the need for additional funds was premature at this time. In an abundance of caution, I have instructed the Claims Administrator to hold 5% of all Awards in reserve. I will revisit Class Counsel's request for additional funds to be paid from that holdback at a later date.

[2] This Petition was submitted at my request. *See* ECF 10019 at 25.

grant the petition in part, allocating $9,381,961.06 of common benefit fund to pay attorney fees and expenses in this first phase of implementation of the Settlement Agreement.

I. Discussion

This case began as an aggregation of lawsuits brought by former Players against the NFL Parties for head injuries sustained while playing NFL football. The Settlement was secured through negotiations that were supported by a creative legal framework that survived rigorous appellate challenge. The details of the work performed by class counsel to secure this Settlement Agreement are set forth more fully in my prior opinions.

Class Counsel's First Verified Petition relates to work performed in the implementation of the Settlement Agreement from January 7, 2017 through May 24, 2018. As was expected, implementation efforts have been time-intensive. Class Counsel's Petition provides an excellent summary of the work that has been essential for the success of this Settlement Agreement, and it will not be restated in full here. Instead, I will briefly describe the work performed by each law firm seeking payment.

The objector urges me to delay in paying Class Benefit attorneys for the work they have performed. They suggest that the amount of work performed in this first year of implementation is unexpected. The objector is wrong. As I already have already explained, the Parties knew that the bulk of the work to implement the settlement would occur in the early years of the 65 year agreement. ECF No. 9860 at 17-18. In addition to that substantial work, Class Counsel have been called upon to represent the class in clashes with predatory lenders and in ensuring that instances of fraud against the fund are properly reviewed and resolved. I was fully aware of this when I asked Co-lead Class Counsel to submit this fee petition. Class Counsel's representation of the Class has been invaluable. Payment for these services is appropriate at this time.

Calculation of the Fee

Class Counsel's fees are based on a straight loadstar calculation, using the billing rates that I previously determined were reasonable. ECF No. 10019 at 7, n. 4 (listing rates); 25 (ordering counsel to use these rates in future fee petitions). The rates are blended rates for partners, of counsel, associates, staff attorneys and contract attorneys, and paralegals.[3]

Early in this litigation, the Plaintiffs' Executive and Steering Committees established protocol's for time and expense reporting, which I approved in Case Management Order #5 ("CMO-5"). ECF No. 3710. I have asked Co-Lead Class Counsel to review the bills submitted by each law firm prior to its submission for reasonableness and for their compliance with CMO-5. Co-Lead Class Counsel worked with each of the other law firms that submitted Common Benefit time and expenses for work done from the Effective Date through May 24, 2018. After the submissions were reviewed and necessary revisions made, the itemized statements were submitted to me for *in camera* review.

I have determined that the time submitted was for work done in advancing the benefit of the class, the work was done with appropriate efficiency, and the fee request submitted was reasonable. In some minor instances, I have determined that, pursuant to Case Management Order #5, certain time was submitted in error. I have adjusted the submitted time accordingly, as is noted below.

[3] The approved billing rates are as follows: $758.35 (for partners); $692.50 (for attorneys who are of counsel); $486.67 (for associates); $537.50 (for contract attorneys); and $260.00 (for paralegals).

The Firm-by-firm Fee Requests

I will address each firm in Co-Lead Class Counsel's fee petition in alphabetical order, setting out the amount of the requested allocation and a brief description of any adjustment that I determined was necessary.

1. Anapol Weiss.

Anapol Weiss has submitted a request for $104,424.80 in fees[4] and $161,310.17 in expenses. The firm performed a wide range of services for the Class in this time period. Primarily, the firm aided in the selection of doctors for the Physician Networks necessary for the implementation of the Settlement Agreement and worked on certain matters relating to interpretation of the Settlement Agreement. In review of the itemized bill submitted, I identified some entries that were not properly included under the restrictions defined by CMO-5, which appear to have been included in error.

I conclude that the firm is entitled to payment for 134.6 hours of work performed by partners for a total of $102,073.91. I also approve the request for $161,310.17 in expenses.

2. The Brad Sohn Law Firm

Brad Sohn has submitted a request for $29,120.64 in fees.[5] Mr. Sohn worked with Seeger Weiss litigating the definition of "eligible season" in the Settlement Agreement. I have reviewed the itemized bill submitted and found the entries consistent with the rigors set forth in CMO-5.

I approve the request for $29,120.64 in fees.

[4] The request was based on 137.7 hours of work performed by partners at the firm.

[5] The request was based on 38.4 hours of work performed by partners at the firm.

3. Levin Sedran & Berman.

Levin Sedran & Berman has submitted a request for $55,587.05 in fees[6] and $406.87 in expenses. The firm worked with Seeger Weiss in the litigation related to third-party funders. In review of the itemized bill submitted, I identified some entries that were not properly included under the restrictions defined by CMO-5, which appear to have been included in error.

I conclude that the firm is entitled to payment for 62 hours of work performed by partners and 2.3 hours of work performed by an attorney who is of counsel for a total of $48,610.45. I also approve the request for $406.87 in expenses.

4. Locks Law Firm.

The Locks Law Firm has submitted a request for $508,094.50 in fees.[7] The firm performed a wide range of services for the class in this time period. Primarily, the firm aided in the selection of doctors for the Physician Networks necessary for the implementation of the Settlement Agreement, worked on certain matters relating to interpretation of the Settlement Agreement, and matters relating to third-party funders. In review of the itemized bill submitted, I identified some entries that were not properly included under the restrictions defined by CMO-5, which appear to have been included in error.

I conclude that the firm is entitled to payment for 662.5 hours of work performed by partners for a total of $502,406.88.

[6] The request was based on 71 hours of work performed by partners at the firm and 2.3 hours of work performed by an attorney who is of counsel.

[7] The request was based on 670 hours of work performed by partners at the firm.

5. NastLaw.

NastLaw has submitted a request for $49,251.77 in fees[8] and $1,422.74 in expenses. The firm provided assistance in early phase implementation protocols and aided in the drafting of certain responses. I have reviewed the itemized bill submitted and found the entries consistent with the rigors set forth in CMO-5.

I approve the request for $49,251.77 in fees and $1,422.74 in expenses

6. Podhurst Orseck.

Podhurst Orseck has submitted a request for $173,313.42 in fees[9] and $18,062.98 in expenses. The firm worked performed a wide range of services for the class in this time period. Primarily, the firm aided in the selection of doctors for the Physician Networks necessary for the implementation of the Settlement Agreement, worked on issued related to the NFL's request for a Special Investigator, and worked on certain matters relating to Settlement Agreement interpretation. In review of the itemized bill submitted, I identified some entries that were not properly included under the restrictions defined by CMO-5, which appear to have been included in error.

I conclude that the firm is entitled to payment for 185.3 hours of work performed by partners and 9.1 hours of work performed by associates and 90.7 hours performed by paralegals for a total of $171,417.54. I also approve the request for $18,062.98 in expenses.

[8] The request was based on 37.8 hours of work performed by partners at the firm and 42.3 hours of work performed by associates.

[9] The request was based on 187.8 hours of work performed by partners at the firm and 9.1 hours of work performed by associates and 90.7 hours performed by paralegals.

7. Professor Samuel Issacharoff.

Professor Issacharoff has submitted a request for $27,528.10 in fees.[10] The professor remains a key advocate for the Class, providing guidance on legal issues as the Settlement is implemented and drafting appellate pleadings. I have reviewed the itemized bill submitted and found the entries consistent with the rigors set forth in CMO-5.

I approve the request for $27,528.10.

8. Seeger Weiss

Seeger Weiss has submitted a request for $7,611,859.69 in fees[11] and $745,041.28 in expenses. As Co-Lead Class Counsel, Seeger Weiss has provided essential services to the Class providing a central firm to efficiently perform the work necessary for the implementation of this complex Settlement Agreement. In this fee request, Co-Lead Class Counsel has provided a detailed list of the services performed to date, which include:

- Establishment of the Registration and Claims Processes;
- Selection of the Appeals Advisory Panel Members and Consultants;
- Selection of Qualified BAP Providers and MAF Physicians and maintenance of the network;
- Review and Support of the Claims Process on behalf of the Class Members;
- Review and Support of the Appeals Process on behalf of the Class Members;

[10] Professor Issacharoff has submitted itemized bills for 36.3 hours of work, which was billed at the blended rate that I have approved for services performed by partners.

[11] The request was based on 6,438.1 hours of work performed by partners, 2,246.2 hours of work performed by attorneys who are of counsel, 1,112.3 hours of work performed by associates and 2,433.5 hours performed by paralegals.

- Review and Support of the BAP Process and work to ensure that the Supplemental Benefits under the BAP are provided;
- Support of Class Members and Individually Retained Plaintiff's Lawyers who represent Class Members; and
- Efforts to protect the Class Members against Third Party Funders and other improper practices.

The successful implementation of the settlement agreement to date is a credit to the work done by the attorneys at Seeger Weiss.

In review of the itemized bill submitted, I identified some entries that were not properly included under the restrictions defined by CMO-5, which appear to have been included in error. I conclude that the firm is entitled to payment for 6,410.4 hours of work performed by partners, 2,235.0 hours of work performed by attorneys who are of counsel, 1,016.1 hours of work performed by associates and 2,391.3 hours performed by paralegals for a total of $7,525,307.73. I also approve the request for $745,041.28 in expenses.

III. Conclusion

For these reasons, I allocate $9,381,961.06 of common benefit funds to pay attorneys for their work in obtaining the Settlement in this case. I will hold in reserve the additional funds to pay for fees incurred in implementing the Settlement Agreement.

And now, this __15th __ day of January, 2019, it is **ORDERED** that the Fund Administrator for the Attorneys' Fees Qualified Settlement Fund ("AFQSF") shall pay each of the firms listed below the amounts, as set forth below, from the AFQSF:

Anapol Weiss	$263,384.08
Brad Sohn Law Firm	$29,120.64
Levin Sedran & Berman	$49,017.32
Locks Law Firm	$502,406.88
NastLaw	$50,674.51
Podhurst Orseck	$189,480.52
Professor Issacharoff	$27,528.10
Seeger Weiss	$8,270,349.01

It is further **ORDERED** that each of the law firms listed above shall cooperate with the Fund Administrator of the AFQSF to effectuate this Order.

s/Anita B. Brody

ANITA B. BRODY, J.

COPIES VIA ECF on 1/16/2019